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Oct. 1878

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. 344.

WILLIAM T. GARRATT, APPELLANT,

vs.

NICHOLAS SEIBERT.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF CALIFORNIA.

FILED JANUARY 15, 1876.

SUPREME COURT OF THE UNITED STATES.

No. 344.

WILLIAM T. GARRATT, APPELLANT,

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1 *Complaint.*

In the circuit court of the United States, district of California.

NICHOLAS SEIBERT
vs.
WILLIAM T. GARRATT. } In equity.

To the honorable the judges of the circuit court of the United States for the district of California:

Nicholas Seibert, of San Francisco, California, and a citizen of the State of California, brings this his bill of complaint against William T. Garratt, of San Francisco, California, and a citizen of the State of California, and thereupon your orator complains and says:

That he, Nicholas Seibert, was and is the original and first inventor of a new and useful improvement in lubricators, fully described in the letters patent hereinafter mentioned, and which had not been known or used before his said invention, and which, at the time of his application for a patent, as hereinafter mentioned, had not been for two years in use or on sale with his consent or allowance.

2 And your orator further shows unto your honors that he, the said Nicholas Seibert, being so, as aforesaid, the first inventor and discoverer of said improvement in lubricators, and being also a citizen of the United States, did, on the 14th day of February, 1871, upon due application therefor, obtain letters patent of the United States for said invention in due form of law, under the seal of the Patent Office of the United States, signed by the Secretary of the Interior, and countersigned by the Commissioner of Patents of the United States, bearing date the day and year last aforesaid, and numbered 111881, whereby there was granted and secured to him, said Nicholas Seibert, his heirs, administrators, or assigns, for the term of seventeen years from and after the date of said letters patent, the full and exclusive right and liberty of making, constructing, using, and vending to others to be used, the said invention and improvement, as set forth in said letters patent, and by virtue whereof he, the said Nicholas Seibert, became and was the sole owner of all the rights and privileges granted and secured, or intended to be granted and secured, as by said letters patent, a copy whereof is hereto annexed and marked "Exhibit A," will more

3 fully and at large appear, and which said Exhibit A your orator prays may be taken as a part of this bill.

And your orator further shows unto your honors that, by virtue of the premises he became and now is the sole and exclusive owner of said letters patent and invention, and of all the rights and privileges granted and secured, or intended to be granted and secured, thereby, and that since he became the owner thereof, as aforesaid, he has invested and expended moneys, and has been to great trouble in and about said invention, and for the purpose of making and selling said lubricators, and causing the same to be profitable to himself, the said Nicholas Seibert, and useful to the public, and that said invention has been and is of great benefit and advantage.

And your orator further shows unto your honors that on the 19th day of November, A. D. 1872, letters patent of the United States, numbered 133217, were issued to William T. Garratt, the defendant herein above named, purporting to secure to the said William T. Garratt, his heirs or assigns, for the term of seventeen years from the said 19th day of November, A. D. 1872, the exclusive right to make, use, and

4 vend an alleged new and useful improvement in lubricators, alleged to have been invented by the said defendant, as by said last-mentioned letters patent, ready in court to be produced, will more fully appear.

And your orator further shows that thereafter, in the month of March, 1873, said William T. Garratt presented to the Commissioner of Patents a petition, whereby he surrendered his aforesaid letters patent of November 19th, 1872, and prayed for the reissue of letters patent for the same alleged invention described in his said previous letters patent of November 19th, 1872, but upon an amended specification.

That thereupon, and upon the 18th day of March, 1873, there was granted by the United States to said William T. Garratt letters patent of the United States No. 5328 for the same alleged invention described in his (complainant's) said previous letters patent of 19th November, 1872, but upon an amended specification, which said reissued letters patent purported to secure to the said William T. Garratt, his heirs or assigns, for the term of seventeen years from the 19th day of November, 1872, the exclusive right to make, use, and vend an alleged new

5 and useful improvement in lubricators, alleged to have been invented by the defendant, a duly authenticated copy of which reissued letters patent last mentioned are hereto annexed, marked "Exhibit B," which your orator prays may be taken as a part of this bill.

And your orator further shows that the said alleged invention, the exclusive right whereto said reissued letters patent (Exhibit B), issued to said defendant, purport to secure to him, is substantially the same invention discovered and made by your orator long previously, to wit, in the month of May, 1870, and the exclusive right whereto was secured to your orator by the said letters patent of the United States issued to him on the fourteenth day of February, 1871, as hereinbefore mentioned, and the said reissued letters patent granted to the said defendant on the 18th day of March, 1873, are a direct interference with the said prior letters patent issued to your orator on the fourteenth day of February, 1871, as aforesaid.

And your orator further shows that the said defendant claims to have been the original and first inventor of said improvement in lubricators described in said letters patent of 14 February, 1871, to

6 plaintiff, because he, the said defendant, claims that some time in the latter part of the year 1869 he constructed one single half-inch steam-pipe, which he, the defendant, claims to have applied to the Roscoe lubricator upon an engine of the Spring Valley Water Works, at Black Point, in the city and county of San Francisco, State of California; but your orator avers that if said steam-pipe was constructed and applied by defendant to said Roscoe lubricator, as claimed by defendant, said steam-pipe was not, and was not intended by defendant to operate as a condenser, but merely as a pipe to convey steam from the steam-pipe to the Roscoe lubricator for the sole purpose of melting and keeping liquid the tallow in said Roscoe lubricator, which tallow was then and there exclusively used by said Spring Valley Water Works as the lubricant for said Roscoe lubricator.

And your orator avers that it was not until the defendant had learned of the aforesaid improvement in lubricators invented by plaintiff (for which said letters patent of 14th February, 1871, were issued to

7 plaintiff), and not until defendant had, in June, 1870, actually seen plaintiff's said improvement in lubricators in successful operation on an engine at the works of the Union Foundry, at San Francisco California, that defendant ever alleged or pretended that said steam

pipe, claimed to have been constructed and applied by him in 1869 to an engine of said "Spring Valley Water Works," as aforementioned, did operate, or was intended to operate, as a condenser, or in any other way than as a medium to convey steam to the Roscoe lubricator for the sole purpose of melting the tallow therein.

And your orator further avers whatever rights, if any, defendant acquired by the construction and application of said steam-pipe to the Roscoe lubricator on the engine of said "Spring Valley Water Works," as aforementioned, were entirely lost by the delay and laches of defendant in obtaining a patent therefor.

And your orator avers that aforesaid patent of 19th November, 1872, No. 133217, and the said reissued letters patent of 18th March, 1873, No. 5328, were severally issued to defendant improvidently and in disregard of the prior rights of your orator in the premises, and in
8 violation of law.

And your orator further shows that by the improvident and illegal issue of said interfering reissued letters patent of the 18th March, 1873, No. 5328, to defendant, your orator will sustain great and irreparable loss and injury.

In order, therefore, that the rights and interests of your orator may be fully protected, your orator prays that your honors may declare and adjudge the said reissued letters patent, issued to the said defendant on the eighteenth day of March, 1873, number 5328, null and void, either in whole or in part, so far as they interfere with and are covered by the previous patent of your orator of the 14th February, 1871, number 111881, and your orator prays for such other relief as the equity of the case may require and to your honors may seem meet.

May it please your honors to grant unto your orator a writ of subpœna of the United States of America, directed to the said William T. Garrett, and commanding him to appear and answer unto this bill of complaint, and to answer more particularly why the said reissued letters patent issued to defendant on the 18th day of March, 1873,
9 No. 5328, should not be declared null and void, either in whole or in part, as far as it interferes with and is covered by the previous patent, issued to your orator February 14th, 1871, and to abide and perform such order and decree in the premises as to the court shall seem meet and be required by the principles of equity and good conscience.

McALLISTER & BERGIN,
Solicitors for Complainant.

HALL McALLISTER,
Counsel for Complainant.

UNITED STATES OF AMERICA,
District of California, ss:

Nicholas Seibert personally appeared before the subscriber this 20th day of October, A. D. 1873, who being first duly sworn, according to law, says that he is the complainant in the foregoing bill named; that so far as the statements contained in the foregoing bill are within his own knowledge they are true, and so far as they are derived from the information of others, he verily believes them to be true.

NICHOLAS SEIBERT.

Sworn and subscribed before me this 20th day of October, A. D. 1873.

JOS. F. O'BEIRNE,
U. S. Comm'r, Dist. of Cal'a.

(Here follows diagram, marked page 10.)

11 EXHIBIT A.

No. 111881.

The United States of America to all to whom these letters patent shall come:

Whereas Nicholas Seibert, of San Francisco, California, has alleged that he has invented a new and useful improvement in lubricators, and has made oath that he is a citizen of the United States; that he verily believes he is the original and first inventor or discoverer of the said improvement, and that the same hath not, to his knowledge and belief, been previously known or used, has paid into the Treasury of the United States the sum of thirty-five dollars, and presented a petition to the Commissioner of Patents, praying that a patent may be issued therefor:

These are therefore to grant to the said Nicholas Seibert, his executors, administrators or assigns, for the term of seventeen years from the fourteenth day of February, one thousand eight hundred and seventy one, the full and exclusive right and liberty of making, using, and vending to others to be used, the said improvement, a description

12 whereof is given in the annexed schedule, and made a part of these presents.

In testimony whereof I have caused these letters to be made patent and the seal of the Patent Office to be hereunto affixed.

Given under my hand at the city of Washington, this fourteenth day of February, in the year of our Lord one thousand eight hundred and seventy-one and of the Independence of the United States of America the ninety-fifth.

W. T. OTTO,
Acting Secretary of the Interior.

[L. S.] SAM'L A. DUNCAN,
Acting Commissioner of Patents.

Countersigned and sealed with the seal of the Patent Office.

UNITED STATES PATENT OFFICE.

Nicholas Seibert, of San Francisco, California. Letters patent No. 111881, dated February 14, 1871. Improvement in lubricators.

The schedule referred to in these letters patent and making part of the same.

13 To all whom it may concern:

Be it known that I, Nicholas Seibert, of San Francisco, in the county of San Francisco, and State of California, have invented a new and useful improvement in lubricator; and I do hereby declare that the following is a full, clear, and exact description thereof, which will enable others skilled in the art to make and use the same, reference being had to the accompanying drawing forming part of this specification.

This invention relates to an improvement in lubricators for steam-engine cylinders, and it consists in the arrangement of parts as hereinafter described, and as particularly specified in the claims.

In the accompanying drawing figure 1 represents a side view of the lubricator as connected with a cylinder of a steam-engine.

Figure 2 is a central section of the lubricator detached.

Similar letters of reference indicate corresponding parts.

A is the cylinder.

B is the steam-pipe.

C is the steam-chest.

A^1 is the condensing-pipe connecting the steam-pipe B and the lubricator.

D is a reservoir which is supplied with water by reason of the steam condensing in the condensing pipe A^1.

E is the oil pipe leading to the cylinder and valve-chest.

F is the cup or reservoir which contains the oil or other lubricating material.

G is the stop cock or valve in the oil pipe E.

H is a check-valve.

I represents a waste-cock at the bottom of the oil reservoir.

J is a glass tube.

K is a sliding guage which indicates the amount of oil used.

L is the regulating feed-valve which is open slightly.

The water in the reservoir D being higher and heavier than the oil in the cup F, forces itself under the oil in the cup F, and glass tube J, and passes out through the check-valve H and oil pipe E into the steam-pipe B to lubricate the valves and cylinders.

M is a cock to regulate the admission of steam from the steam-chest into the oil cup F, when tallow is used. The cock I is used to draw the water off when the cup F is replenished.

N is a screw-plug in the top of the oil cup or reservoir F through which the oil or other lubricating material is introduced.

O is a vertical tube within the oil cup F.

P is another vertical tube within O, and Q is an annular space between the two tubes.

The tube H is a communication with the steam in the steam-chest by means of the passages S S^1, so that the space Q is kept hot by the steam which enters it as indicated by the arrow.

R R are passages leading from the oil reservoir F to the glass tube J. The oil in the glass tube will stand at the same height as in the reservoir, so that the quantity contained therein may be always visible to the eye. The guage K may be set at any time when the machinery is to be put in motion to indicate the height at which the oil stands. When the movement of the machinery has ceased, the distance between the height of the oil and the guage will indicate the precise quantity consumed (the cubical capacity of the reservoir F being known).

Whatever amount of steam may condense in the tubes O and P will flow back into the steam-chest C by gravity.

The steam-pressure in the tubes D and E is at all times equal, hence the gravity of the water in the former will determine the direction of the flow of oil.

Having thus described my invention, I claim as new and desire to secure by letters patent—

1. The arrangement of a cock M, passages S S^1, and tubes O and P, with the oil reservoir F and guage J R as herein shown and described for the purpose specified.

2. The improved lubricator consisting of the parts herein described, constructed, and arranged substantially as specified.

NICHOLAS SEIBERT.

Witnesses:

BEN. MORGAN,

W. L. BROMLEY.

EXHIBIT B.

THE U. S. [Vignette] PATENT OFFICE.

To all persons to whom these presents shall come, greeting:

This is to certify that the annexed is a true copy from the records of this office of the reissue letters patent granted to W'm T. Garrett, dated March 18th, 1873, No. 5328 for improvement in lubricators.

In testimony whereof I, M. D. Leggett, Commissioner of Patents, have caused the seal of the Patent Office to be hereunto affixed this twenty-eighth day of August, in the year of our Lord one thousand eight hundred and seventy-three, and of the Independence of the United States the ninety eighth.

[SEAL.]

M. D. LEGGETT,
Commissioner.

18 [Vignette.]

The United States of America to all whom these presents shall come:

Whereas William T. Garratt, of San Francisco, California, has presented to the Commissioner of Patents a petition praying for the reissue of letters patent for an alleged new and useful improvement in lubricators, (for which letters patent were issued to him, November 19, 1872, which letters having been surrendered, the same has been canceled, and new letters ordered to issue to him on an amended specification) a description of which invention is contained in the specification of which a copy is hereunto annexed and made a part hereof, and has complied with the various requirements of law in such cases made and provided; and whereas upon due examination made the said claimant is adjudged to be justly entitled to a patent under the law.

Now, therefore, these letters patent are to grant unto the said William T. Garrett, his heirs or assigns for the term of seventeen years
19 from the nineteenth day of November, one thousand eight hundred and seventy-two, the exclusive right to make, use, and vend the said invention throughout the United States and the Territories thereof.

In testimony whereof I have hereunto set my hand and caused the seal of the Patent Office to be affixed at the city of Washington this eighteenth day of March, in the year of our Lord one thousand eight hundred and seventy-three, and of the Independence of the United States of America the ninety-seventh.

[L. S.]

B. R. COWEN,
Acting Secretary of the Interior.

Countersigned:
M. D. LEGGETT,
Commissioner of Patents.

(Here follows diagram marked page 20.)

21 UNITED STATES PATENT OFFICE.

William T. Garratt, of San Francisco, California, improvement in lubricators. Specification forming part of letters patent No. 133217, dated November 19, 1872; reissue No. 5328, dated March 18, 1873.

To all whom it may concern:

Be it known that I, William T. Garratt, of San Francisco, in the coun

ty of San Francisco and State of California, have invented certain improvements in lubricators, of which the following is a specification:

My invention consists in a combination of a condensing tube and certain regulating cocks or valves with that class of lubricators in which steam pressure has heretofore been used to force the oil from the holder to the place to be lubricated: the object of the said improvement being to permit the direct application of the steam to the oil by the water of condensation interposed between and to limit or regulate the hydrostatic pressure, all as hereinafter described.

Figure 1 is partly a side elevation and partly a sectional elevation of my improved oiler, and Fig. 2 is a horizontal section of Fig. 1 on the same line, *x x*.

A is a metallic or glass oil holding cylinder, which may be of any suitable kind with a filling cup, B, at the top. C is the tube leading from the top of the said holder to the valve-chest journal, or other part where it is desired to inject or deposit the lubricant. E is a pipe for withdrawing water from the vessel A, from time to time, as it becomes filled, said pipe being provided with a cock for closing it. F is the condenser, which consists of a vertical cylinder or other shaped vessel arranged with the holder A, but extending a little higher than vessel A, and having a pipe connection, G, at the top with the steam-pipe or boiler. The lower end is connected with the bottom of the holder A by a connection H, provided with a valve or cock I, for checking the flow into the vessel A, or closing it altogether.

The essential feature of my invention is the arrangement of the condensing pipe and cock to supply the lubricator with water in such manner that the water will not be forced into the oil chamber by steam-pressure, so that the pressure operating to eject the oil will only be
23 that due to the weight of the column of water in the condenser, or thereabout, so as to flow in by virtue of its gravity only, and expel the oil by the same force. This control of the induction passage is of vital importance, not only on account of limiting the force of the water column, but because it saves the necessity of gaging the flow of oil through the cock in pipe C, which is objectionable, because when contracted it is liable to choke by the gummy nature of the oil and the collection of foreign matters therein, while the cock I is not liable to choke, as the water of condensation is pure and not gummy in its nature.

In my instrument the exit valve is generally wide open so that the oil is not subject to choke, which cannot be permitted in any instrument not having a valve between the steam-boiler and the holder, because the oil would be forced out at once.

By my arrangement, when applied to the lubrication of journals and other like parts where there is no back pressure, the oil chamber and its attachments are subjected to no greater pressure than the simple weight of the contained lubricant and the water, whereby destruction of
24 joints and leakage are avoided.

My arrangement of the condensing pipe or attachment to rise higher than the holder is of great importance to the efficiency of the lubricator, whether employed in connection with steam cylinder, journals, or other parts to be lubricated: for without such provision the lubricant could not be used until steam-pressure had first been obtained.

From this description it will be understood that the oil reservoir of the lubricator is so combined with the elevated condensing pipe or vessel, the lower end of which is connected by an opening, H, with the lower part of the reservoir A, that the hydrostatic pressure of the water in the vessel F will cause the lubricant to flow in the lubricator, the atmos-

phere, steam, or other pressure being equally balanced, thus operating equally in compelling and resisting the flow of the lubricant.

Having thus described my invention, what I claim as new, and desire to secure by letters patent, is—

1. In combination with the oil reservoir A, of a lubricator, the elevated condensing-pipe or vessel F, the lower end of which is connected by an opening, H, with the lower part of the reservoir A, substantially as and for the purpose hereinbefore set forth.

2. The combination in a lubricator of the cost or valve I, with the condensing-pipe F, and oil reservoir A, substantially as and for the purpose hereinbefore set forth.

WILLIAM T. GARRATT. [L. S.]

Witnesses:
C. W. M. SMITH.
WM BURNETT.

(Endorsed:) Bill of complaint. Filed 6 November, 1873. L. S. B. Sawyer, clerk.

Subpœna.

UNITED STATES OF AMERICA.

Circuit court of the United States, ninth circuit, district of California. In equity.

The President of the United States of America to William T. Garratt, a citizen of the State of California, greeting:

You are hereby commanded, that you be and appear in said circuit court of the United States aforesaid, at the court-room in San Francisco, on the 1st day of December, A. D. 1873, to answer a bill of complaint exhibited against you in said court by Nicholas Seibert, who is a citizen of the State of California, and to do and receive what the said court shall have considered in that behalf. And this you are not to omit under the penalty of five thousand dollars.

Witness the honorable N. Clifford, Justice of the Supreme Court of the United States, this 6th day of November, in the year of our Lord one thousand eight hundred and seventy-three, and of our Independence the ninety-eighth.

[SEAL.] L. S. B. SAWYER, *Clerk.*

MEMORANDUM.—Pursuant to rule 12, Supreme Court U. S., you are hereby required to enter your appearance in the above suit on or before the first Monday of December next, at the clerk's office of said court, pursuant to said bill, otherwise the said bill will be taken pro confesso.

L. S. B. SAWYER, *Clerk.*

OFFICE OF THE MARSHAL,
Dist. of Cala.

I hereby certify that I received the within subpœna in equity, on the 6th day of November, 1873, and personally served the same on W. T. Garratt, by delivering to M. A. Wheaton, his attorney, a certified copy of the same attached to a certified copy of the complaint, in the city and county of San Francisco, on the 5th day of March, A. D. 1874.

Dated San Francisco, March 5th, 1874.

WM GOUVENEUR MORRIS,
U. S. Marshal.
By A. W. PRUSHAU, *Deputy.*

(Endorsed:) Returned and filed 5th March, 1874. L. S. B. Sawyer, clerk, by J. F. O'Beirne, deputy clerk.

29 *Answer.*

In the United States circuit court, district of California, ninth circuit..

NICHOLAS SEIBERT, COMPLAINANT,
vs.
WILLIAM T. GARRATT, RESPONDENT.

Now comes William T. Garratt, the above named respondent, and answering the bill of complaint herein filed admits that the letters patent and each of them mentioned in the complaint were granted by the United States Government at the dates and to the grantees therein set forth, but respondent denies that the invention described in the patent granted to him (Exhibit B) was ever discovered or invented, in whole or in part, by the complainant, and denies that the same or any part thereof was secured to the complainant by the patent Exhibit A, which is made a part of the bill of complaint herein filed.

Respondent further says that in the year A. D. 1872, upon proceeding regularly held, an interference was declared by the U. S. Com-
30 missioner of Patents between the complainant and respondent as provided by law, in order to try the question of priority, and decide whether the complainant or respondent was the first inventor of the invention described in said Exhibit B.

That upon such interference testimony was taken, and all the facts bearing upon the question at issue were proved, and thereupon the said Commissioner of Patents decided that the respondent was the first and original inventor of the invention described in said Exhibit B, and granted the respondent a patent therefor, which patent was afterwards reissued as shown by Exhibit B.

Respondent further says that in the fall of A. D. 1869 he caused two of the said inventions to be placed upon two engines at the works of the Water Company at Black Point, in this the city and county of San Francisco, and said inventions have ever since then remained in public and successful use and operation upon said engines.

Respondent denies that either of said inventions was placed upon said engines merely as a pipe to convey steam from the steam-pipe to the Roscoe lubricator for the purpose of melting or keeping
31 liquid the tallow in said Roscoe lubricator, but on the contrary avers that the same were put there to act as condensing pipes in all respects as described in said Exhibit B, and that the same did so act and operate, and were then intended to so act and operate by this respondent, and it was for such purpose that he caused them to be placed there, and he then so claimed, and he denies that he first made such claim at any subsequent date.

Respondent denies that the rights which he then acquired by making said invention or any of them were lost by laches in obtaining a patent or in any way whatever.

Respondent denies that either the said letters patent number 133217, or the reissued letters patent, Exhibit B, was issued to him improvidently, or in disregard of any of complainant's rights, or in violation of law, and denies that the complainant will sustain any loss or injury on account of any improvident or illegal issue of said Exhibit B.

Wherefore respondent prays to be dismissed hence with his costs.

M. A. WHEATON,
Att'y for Respondent.

32 STATE OF CALIFORNIA,
City and County of San Francisco, ss:

William T. Garratt, being duly sworn, says that he is the respondent in the above entitled action, that he has read the foregoing answer and knows the contents thereof, and that the same is true of his own knowledge, except as to those matters which are therein stated on information or belief, and as to these matters he believes it to be true.

W. T. GARRATT.

Subscribed and sworn to before me this 22d day of April, A. D. 1874.

JOS. F. O'BEIRNE,
U. S. Commissioner.

(Endorsed:)

Service of a copy of the within answer admitted this 22nd day of April, A. D. 1874, and respondent may have three days in which to file this original.

McALLISTERS & BERGIN,
Att'ys for Complainant.

Filed 22nd April, 1874.

L. S. B. SAWYER,
Clerk.
By J. F. O'BEIRNE,
Deputy Clerk.

33 *Replication.*

In the circuit court of the United States, for the district of California.

NICHOLAS SEIBERT
vs.
WILLIAM T. GARRATT. } In equity.

To the honorable the judges of the circuit court of the United States for the district of California:

The replication of Nicholas Seibert, complainant, to the answer of William T. Garratt, defendant.

This repliant, saving and reserving unto himself all and all manner of advantage of exception to the manifold insufficiencies of the said answer, for replication thereunto saith that he will aver and prove his said bill to be true, certain and sufficient in the law to be answered unto, and that the said answer of said defendant is uncertain, untrue and insufficient to be replied unto by this repliant; without this, that any other matter or thing whatsoever in the said answer contained, ma-
34 terial or effectual in the law to be replied unto, confessed and avoided, traversed, or denied, is true. All which matters and things this repliant is and will be ready to aver and prove as this honorable court shall direct, and humbly prays as in and by his said bill he hath already prayed.

McALLISTER & BERGIN,
Solicitors for Complainant.

HALL McALLISTER,
Counsel for Complainant.

I hereby consent to the filing of within replication as in due time. March 23, 1875.

M. A. WHEATON,
Solicitor for Defendant.

Filed 23 March, 1875.

L. S. B. SAWYER,
Clerk.

By J. F. O'BEIRNE,
Deputy Clerk.

35 Memorandum of costs and disbursements.

UNITED STATES OF AMERICA:

In the circuit court of the United States of the ninth circuit in and for the district of California.

NICHOLAS SEIBERT, PLAINTIFF,
vs.
WM T. GARRATT, DEFENDANT.

Memorandum of costs and disbursements.

Witness fees:

J. Blanken,	2 days	$3 00
J. Hillman,	1 "	1 50
A. Montgomery,	1 "	1 50
W. L. Phillips,	1 "	1 50
J. M. Stockman,	1 "	1 50
Cha's Watson,	2 "	3 00
J. H. Weed,	1 "	1 50
C. B. White,	1 "	1 50
		$15 00

Disbursements:

Certified copies, 3 patents	$4 50
Marshal's fees	$11 35
Clerk's fees	*$86 05
Examiner's fees	$71 70
Witness fees, as above	$15 00
Reporter's fees	†$33 00
Docket fees	$20 00
Fees taking 11 depositions as follows: Jacob Blanken, W. T. Garratt, Ja's Hillman, A. Montgomery, W. L. Phillips, J. M. Stockman, N. Seibert, J. Snyder, Cha's Watson, J. H. Weed, Cha's B. White	27 50
	$269 10

33
29 75

62 75

62 75

Taxed at $206 35

L. S. B. SAWYER,
Clerk.

* Less $29.75 costs in other case. † Disal. No reporter.

UNITED STATES OF AMERICA,
District of California, City and County of San Francisco, ss:

36 Nicholas Seibert, being duly sworn, deposes and says, that he is the plaintiff in the above-entitled cause; that the items in the above memorandum contained are correct to the best of this deponent's knowledge and belief, and that the said disbursements have been necessarily incurred in the said cause.

N. SEIBERT.

Subscribed and sworn to before me this 25 day of August, A. D. 1875.

JOS. F. O'BEIRNE,
Commissioner U. S. Circuit Court, &c.

To M. A. WHEATON, Esq.,
Sol'r for Wm T. Garratt:

Please take notice that we shall attend before L. S. B. Sawyer, esq., clerk of the within-named court, on Thursday, the 26th day of August, 1875, at two o'clock p. m., at the office of said clerk, situate room No. 1, Old Merchants' Exchange, at the northeast corner of Washington & Battery streets, in the city and county of San Francisco, to tax the within costs.

Dated Aug't 25th, 1875.

Y'rs, &c.,

McALLISTERS & BERGIN,
Sol'rs for Plaintiff.

37 (Endorsed:) Service of the within memorandum of costs & disbursements, and within notice and receipt of copies thereof, admitted this 25th day of August, A. D. 1875.

M. A. WHEATON,
Sol'r for Defendant, Wm T Garratt.

Filed this 25th day of August, A. D. 1875.

L. S. B. SAWYER, *Clerk.*
By J. F. O'BEIRNE, *Depaty Clerk.*

38 *Enrollment.*

At a stated term of the circuit court of the United States of America for the district of California, in the ninth judicial circuit, held at the court-room thereof, in the city and county of San Francisco, on Thursday, the 30th day of September, in the year of our Lord one thousand eight hundred and seventy-five.

Present, the honorable Lorenzo Sawyer, circuit judge.

NICHOLAS SEIBERT, COMPLAINANT, *vs.* WILLIAM T. GARRATT, DEFENDANT. } In equity.

The above-named complainant filed his bill of complaint against said defendant on the 6th day of November, A. D. 1873; thereupon a subpœna to appear herein was duly issued, returnable on the first Monday of November then next ensuing, and service thereof made by the marshal of said district upon the solicitor of said defendant on the 5th

39 day of March, A. D. 1874. The bill of complaint and subpœna, with the marshal's return of service thereon endorsed, are hereto annexed.

The defendant appeared herein by M. A. Wheaton, esq., solicitor.

On the 22d day of April, A. D. 1874, the defendant filed an answer to said bill of complaint. Said answer is hereto annexed.

On the 23d day of March, A. D. 1875, complainant filed his replication to said answer, which replication is annexed hereto.

On the 30th day of September, A. D. 1875, said cause having previously been brought on for hearing, a final decree was filed and entered herein which is hereto annexed, and is in the words and figures following, to wit:

At a stated term of the circuit court of the United States of America of the ninth judicial circuit, in and for the district of California, held at the court-room in the city and county of San Francisco, on Thurs-
40 day, the 30th day of September, in the year of our Lord one thousand eight hundred and seventy-five.

Present, the honorable Lorenzo Sawyer, judge.

NICHOLAS SEIBERT, COMPLAINANT, }
vs. } No. 1199. In equity.
WILLIAM T. GARRATT, DEFENDANT. }

Decree.

This cause came on to be heard at the February term, A. D. 1875, of this court, and was argued by counsel, and thereupon upon consideration thereof, it was ordered, adjudged, and decreed as follows, viz:

That defendant, William T. Garratt, was not the first or original inventor or discoverer of the improvement or discovery claimed by him, in and by those certain reissued letters-patent of the United States, number five thousand three hundred and twenty-eight (No. 5328), for an
41 alleged new and useful improvement in lubricators, issued to said defendant, William T. Garratt, on the 18th day of March, A. D. 1873, and is not entitled to a patent therefor, and that said re-issued letters-patent number five thousand three hundred and twenty-eight (No. 5328) are declared void, and the same are hereby vacated and set aside by reason of their interference with those certain letters-patent of the United States number one hundred and eleven thousand eight hundred and eighty-one (No. 111,881), for a new and useful improvement in lubricators issued to complainant, Nicholas Seibert, on the fourteenth (14th) day of February, A. D. 1871.

It was also further ordered, adjudged and decreed that complainant do have and recover of and from defendant his costs and expenses to be taxed herein.

(Signed) LORENZO SAWYER,
Circuit Judge.

(Endorsed:) Filed and entered Sept. 30th, 1875. L. S. B. Sawyer, clerk, by J. F. O'Beirne, deputy clerk.

42 Whereupon the said pleadings and final decree together with the taxed costs are hereto annexed, said decree being duly signed, filed and enrolled pursuant to the practice of said circuit court.

Attest, &c.

[SEAL.] L. S. B. SAWYER, *Clerk*,
By J. F. O'BEIRNE, *Deputy Clerk*.

(Endorsed:) Enrolled papers filed 30th Sept'r, 1875. L. S. B. Sawyer, clerk, by J. F. O'Beirne, deputy clerk.

43 *Deposition of James Hillman.*

In the circuit court of the United States, ninth judicial circuit, district of California.

NICHOLAS SEIBERT }
vs.
W. T. GARRATT. }

JAMES HILLMAN:

My name is James Hillman; age, 41; occupation machinist and engineer, at present a member of the firm of W. T. Garratt & Co., old brass founders; residence, San Francisco.

Question. When did you first become a member of the firm of W. T. Garratt & Co.?

Answer. February 1st, A. D. 1870.

Question. The firm of W. T. Garratt & Co. are the agents of the Roscoe oiler, are they not?

Answer. As far as my knowledge leads, they are.

Question. The object of the Roscoe oiler was for the purpose of using tallow as a lubricant, was it not?

44 Answer. I have never read nor seen the specifications of that oiler.

Question. Look at that (showing witness certified copy from U. S. Patent Office of specifications of Roscoe oiler), read over the specifications, and see if they describe the mode of its construction.

Answer. From reading the specification and looking at the drawing it does describe the construction of the Roscoe cup.

Question. Does M'r Roscoe in his specifications say that the object of his invention is to enable him to use tallow as a lubricant?

Answer. He does.

Question. How does he say the tallow is to be kept in a liquid state?

Answer. The steam is admitted by the pipe K here to vessel A, and exerting the pressure on the surface of the tallow melts the same and causes it to mix with the steam and pass into the cylinder of the engine.

45 Question. Suppose the steam entering pipe K into vessel A did not melt the tallow, what remedy would you apply to keep the same in a liquid state?

Answer. I would first alter the pipe so that it would keep it in a liquid state.

Question (showing witness Exhibit A). Would a communication of steam by means of pipe B connected with the bottom of the oiler, the pipe being properly proportioned, keep the tallow in a liquid state?

Answer. That would be altogether depending upon the temperature of the tallow-cup.

Question. Supposing pipe B to be two feet long, connected with the steam pipe and cup, irrespective of the temperature of the cup itself, would it communicate sufficient heat to keep the tallow in a liquid state?

Answer. Not without the temperature of the cup would allow the tallow in a liquid state, without there is a current of water passing

46 through the pipe, no matter whether it was eight or ten feet long.

Question. Suppose the cup A be placed at such a distance from the engine that the tallow contained in it becomes perfectly cold and hard, do I understand you to say that a pipe two feet in length

connected with the steam-pipe and bottom of the cup would not keep the tallow in a liquid state?

Answer. It would not without a current be allowed to pass through.

Question. Is there not necessarily a current through it when cock I is opened and the lubricant is being fed out?

Answer. It would not providing the cup was full and hard before allowing the steam to enter.

Question. Suppose the tallow is in a partial liquid state before being put in the cup, and the heat entering through valve I is insufficient to keep it sufficiently liquid to feed out, would not steam entering
47 through pipe B and communicating with the bottom of the cup remedy that defect?

Answer. I do not think it would without opening cocks E and I.

Question. Could you work the machine without opening cocks E and I?

Answer. Not at all.

Question. Do you recollect of carrying to M'r Stockman's pattern shop a drawing like Seibert's improved lubricator in May or June, 1870?

Answer. Yes, one like it.

Question. Where did you get that drawing?

Answer. I made it myself.

Question. Did you ever see a machine like it before you made that drawing?

Answer. I have seen and constructed them to do what this does, but not of the same shape.

Question. Did you ever see a cup like Seibert's at the Union
48 Iron Works in this city, on their *i*ngine?

Answer. Yes, that is where I took the drawing.

Question. You were aware that that cup was manufactured by M'r Seibert, and put there, were you not?

Answer. Yes, I went there to see that cup, to see how near it corresponded with the Roscoe cup.

Question. Was it necessary to make a drawing to ascertain that identity?

Answer. Oh, no; not necessarily so; only to be correct about the matter.

Question. You took that drawing to M'r Stockman's shop and asked him to make you a pattern after that, did you not?

Answer. Yes, sir.

Question. Did he make you the pattern?

Answer. He did.

49 Question. You afterwards made a model after that pattern, did you not?

Answer. I afterwards made two.

Question. You sent one of those models to Washington when applying for letters patent?

Answer. No, sir; they were full-sized working cups.

Question. Did you ever make an application for letters patent on improved lubricators, and accompany that application with a model made after the pattern you said you furnished Stockman?

Answer. No, sir; not fully like that.

Question. In what particular did it differ from that and the one now before you (Seibert's improved lubricator)?

Answer. It differed from those by having a combination of M'r Garratt's and my own.

Question. Please take this cup (Seibert's) and explain the difference

between that and the one accompanying the application for letters patent.

50 Answer. It differed by having two brass heads on a glass cylinder, held together by four bolts; a stand-pipe at one side to admit steam or water; a siphon on the opposite side for the tallow to flow into the steam chest; a waste-cock at the bottom, to draw off either the water or the oil; an opening at the top for filling.

Question. Please explain how the oiler you have just described differs in principle from Seibert's, the one before you now.

Answer. I do not see any difference from that, or the Roscoe cup.

Question. M'r Garratt and yourself made a joint application, did you not, for the improvement in lubricators you have just described?

Answer. Yes.

Question. Did you receive letters patent for that on that application?

Answer. We did not.

51 Question. Why did you not?

Answer. Because the siphon had been used before.

Question. Did you, in your application for letters patent, claim the siphon as patentable?

Answer. Yes; that was a portion of the claim.

Question. Did you ever receive any communication from the Patent Office in regard to that application?

Answer. I have never seen any communications in regard to it.

Question. Then you don't undertake to swear positively for what reason it was rejected?

Answer. No, sir.

Question. Did you ever take any steps or make any application for letters patent for improvements in lubricators for the kind you have described before you made a draft of the cup on the Union Foundry

52 engine, and which you furnished M'r Stockman to make a pattern of?

Answer. No, sir.

Cross-examination:

Questions by M. A. Wheaton, esq., att'y for W. T. Garratt:

Question. What was your object in taking drawings of Seibert's lubricator and bringing it to Stockman's to have patterns made?

Answer. To see how near it corresponded with the working parts of the Roscoe oiler, which our firm was then making.

Question. Did your firm have the exclusive right of making the Roscoe cups for the Pacific Coast at that time?

Answer. Yes, sir.

Question. Was that the general principle on which all these

53 oilers work contained in the patent granted to John Absterdam, in 1854?

(Objected to on the ground that it is not the best evidence as to the principle contained in Absterdam's patent, and that the patent itself is the better evidence.)

Answer. It is.

JAMES HILLMAN.

Subscribed and sworn to before me this 25th day of January, A. D. 1872.

JOS. F. O'BEIRNE.
U. S. Commissioner, Cal'a.

(A copy from evidence on file in U. S. Patent Office.)

54 Circuit court of the United States, ninth judicial circuit, district of California.

NICHOLAS SEIBERT }
vs. } No. 1119.
W. T. GARRATT. }

Be it remembered, that on this 17th day of August, A. D. 1874, at my office in the United States courts building, in the city of San Francisco, personally appeared before me Joseph F. O'Beirne, an examiner in chancery, duly appointed by the circuit court of the United States for the ninth judicial circuit in and for the district of California, JAMES HILLMAN, a witness on behalf of the complainant in the above entitled cause.

Hall McAllister, esq., appeared as solicitor for the complainant, and M. A. Wheaton, esq., as solicitor for the defendant.

And the said witness having been by me first cautioned and sworn to testify to the truth, the whole truth, and nothing but the truth, in the cause aforesaid, did thereupon depose and say as follows, that is to say:

Examination in chief by Hall McAllister:

55 Question. What is your name, age, occupation, and place of residence?

Answer. My name is James Hillman; my age is — years and upwards; my occupation is ———, and my place of residence, ———.

Question. Are you at present one of the firm of William T. Garratt & Co.?

Answer. No, sir.

Question. What is your present occupation?

Answer. United States inspector of steam machinery.

Question. Do you know the lubricating cup known as the "Eureka Lubricator," claimed to be invented by the complainant in this case?

Answer. I know Seibert's cup, but not as the "Eureka Lubricator."

Question. When did you first know of Seibert's lubricating cup?

56 Answer. Well, as near as I can recollect it was between 1870 or 1871. It was either along the latter part of 1870 or first part of 1871.

Question. Where did you first see Seibert's lubricating cup?

Answer. The first one I saw was on the engine running the Union Iron Works, on the corner of First and Mission streets in this city.

Question. When and from whom did you first hear of Seibert's lubricating cup?

Answer. From either M'r Dietrich or M'r Scott, of the Union Iron Works; I think it was from M'r Dietrich—both of the Union Iron Works.

Question. At whose request was it that you first took a drawing of Seibert's cup at the Union Iron Works?

Answer. At the request of W'm T. Garratt.

Question. Previous to your making the drawing of the Seibert's lubricating cup at the Union Iron Works, had you, or William T.

57 Garratt, or William T. Garratt & Co., ever made any lubricating cup substantially the same as the Seibert's lubricating cup?

Answer. Not in shape, but in principle the same; which is the Roscoe cup made by William T. Garratt, before the company was formed, and afterwards by William T. Garratt & Co.

Question. If William T. Garratt or William T. Garratt & Co. had, previous to your making the drawing of the cup at the Union Iron

Works, had made lubricating cups substantially the same as the Seibert's lubricating cup, why did William T. Garratt request you to make a drawing of Seibert's cup at the Union Iron Works, and why did you make that drawing; and why did you thereafter have a pattern made from that drawing?

Answer. The drawing was made to see how far the Seibert cup differed from the Roscoe and the Ross & Holland cup, which I had previously mentioned to M'r Garratt; I formerly being the owner of the Ross and Holland cup in 1858 and 1859, in Philadelphia.

58 Question. You have not answered that portion of the last interrogatory which inquires why you had a pattern made from that drawing.

Answer. That was to make a working cup to see if it would operate the same as those two cups.

Question. Is it your opinion now as an expert that the Ross & Holland cup is identical in principle with the Seibert cup?

Answer. They are not identically the same. I consider the column of water as expressed in the Seibert cup better than the Ross and Holland cup, for the reason that it keeps the instrument better. The reason is, that in the Seibert cup the water and steam intermingles with the lubricant at a lower temperature than where the steam is admitted direct to the cup.

Question. State how the oil is fed by the Ross and Holland cup to the steam-chest.

Answer. Through the bottom of the cup with a screw-valve operated from the top of the cup, with a handle having only 2 valves. There is

59 no outside column of water in the Ross and Holland cup, and only operates inside of the cup as it condenses.

Question. Is the Ross and Holland cup so made that either oil or tallow can be used as a lubricant?

Answer. Either oil or tallow.

Question. In the Ross and Holland cup how is the tallow made liquid?

Answer. With any kind of can, so that it is made hot, and the tallow made liquid before being passed into the cup of the Ross and Holland.

Question. Is it your opinion now that the Roscoe cup is identical in principle with the Seibert cup?

Answer. The principle of lubricating is one and the same in proper hands.

Question. Is the oil in the Roscoe cup fed to the steam-chest in the same way as in the Seibert's cup?

Answer. It can be fed in the same way, and it is allowing as

60 to how the cup is constructed on the chest. You cannot feed the lubricant as regularly with the Roscoe cup as with the Seibert cup, on account of the sight-glass in the Seibert cup, which shows you the amount of lubricant you are feeding.

Question. Will you explain more fully how the oil is fed to the steam-chest from the Roscoe cup?

Answer. In the Roscoe cup the oil is first poured into the cup, then a column of steam is fed from the bottom or side of the Roscoe cup, allowing the steam to enter and condense. The water as condensed goes to the bottom and raises the tallow or oil which flows through the tube at the bottom or at the side, to the steam chest.

Question. Did you or W'm T. Garratt, or W'm T. Garratt & Co., manufacture any cups like the Seibert cup previous to your having made

the drawing of the Seibert cup at the Union Iron Works, excluding from your answer the Ross and Holland cup and the Roscoe cup?

Answer. Not to my knowledge. M'r Garratt showed me the
61 framework of a broken cup which he made and used at Spaulding's Saw Works in this city, with glass body and brass top and bottom.

Question. When M'r Garratt so showed you this framework of a broken cup, how far was it completed?

Answer. The cup, Garratt told me, had been in operation, and was broken in Spaulding's Saw Factory in San Francisco.

Question. Did this cup last mentioned, which you had been told was in use at Spaulding's Saw Works, have an outside column of water which was used for the purpose of regulating the feeding of the lubricant?

Answer. That I can't say.

Question. About what time was it that M'r Garratt showed you this broken cup which he said had been used at Spaulding's Saw Works?

Answer. About the time I made the drawing of the Seibert cup in the Union Iron Works.

Question. Do you know M'r William Anderfuren, pattern-
62 maker, now present?

Answer. I do.

Question. After you had made a drawing of the Seibert's cup, then at the Union Iron Works, and taken it to J. M. Stockman's pattern-shop, did you have any conversation there with M'r William Anderfuren, in which you stated to M'r Anderfuren upon his asking you how the Seibert cup worked, that you did not know how it worked, or words to that effect?

Answer. I don't recollect.

The further examination of the witness, James Hillman, was by consent of the respective parties complainant and defendant, adjourned to Tuesday, August 18th, A. D. 1874, at 11 o'clock, a. m.

Attest, &c.

J. F. O'BEIRNE,
Examiner.

TUESDAY, *August 18th*, 1874.

Counsel present as before.
Cross-examination waived.

JAMES HILLMAN.

Subscribed and sworn to before me this 18th day of August, A. D 1874.

JOS. F. O'BEIRNE,
Examiner in chancery, U. S. Circuit Court, Dist. of Cal'a.

63 *Deposition of Charles Watson.*

Circuit court of the United States, ninth judicial circuit, district of California.

NICHOLAS SEIBERT *vs.* W. T. GARRATT. } No. 1199.

Be it remembered, that on this 17th day of August, A. D. 1874, at

my office in the United States court building, in the city of San Francisco, personally appeared before me, Jos. F. O'Beirne, an examiner in chancery, duly appointed by the circuit court of the United States for the ninth judicial circuit in and for the district of California, Charles Watson, a witness on behalf of the complainant in the above entitled cause.

Hall McAllister, esq., appeared as solicitor for the complainant, and M. A. Wheaton, esq., as solicitor for the defendant.

And the said witness having been by me first cautioned and sworn to testify to the truth, the whole truth, and nothing but the truth, in the cause aforesaid, did thereupon depose and say as follows, that is to say:

Examination in chief of Charles Watson, by Hall McAllister, esq.

64 Question. What is your name, age, occupation, and place of residence?

Answer. My name is Charles Watson; my age is 43 years and upwards; my occupation is engineer, and my place of residence San Francisco. I am at present chief engineer of the California Sugar Refinery.

Question. Do you know where the manufactory called the Pioneer Woolen Mills is situated?

Answer. I do. In San Francisco just east of the Black Point Military Reservation, close to the waters of North Beach.

Question. Were you ever employed at the Pioneer Woolen Mills, and if so, in what capacity, and during what period of time?

Answer. I was employed at the Pioneer Woolen Mills as chief engineer, from November, 1866, to May, 1870.

Question. During all the time of your employment at the Pioneer Woolen Mills, did the Spring Valley Water Works have any
65 building and steam-machinery near to said Pioneer Woolen Mills?

Answer. They had. The building of the Spring Valley Works adjoined the Pioneer Woolen Mills with an alley-way between them. The Spring Valley Water Works had in the said building two steam engines and four pumps, for the purpose of pumping water into their various reservoirs.

Question. During all the time of your employment at the Pioneer Woolen Mills, who was the chief engineer at the aforesaid steam-works of the Spring Valley Water Works, and what was your acquaintance with him?

Answer. Jacob Snyder and I was well acquainted. Saw him sometimes two or three times a day and sometimes once a day. He used occasionally to come into my engine room at the Pioneer Woolen Mills.

Question. Did Jacob Snyder ever consult you as to the use of the Roscoe Lubricating Cup on the steam-engines of the Spring Valley Water Works in their said building close to the Pioneer Woolen Mills? If so, when was that consultation?

66 Answer. He did consult me upon that matter sometime in the fall of 1869. He came into my engine-room at the Pioneer Woolen Mills, and told me that he had great difficulty in using the Roscoe Cup on his steam-engines. I asked him what the trouble was. He told me the tallow congealed in the cup, and he could not get it to feed. I told him that difficulty was easily overcome, and proposed to put on a melting pipe to the Roscoe Cup so as to melt the tallow in the cup. He asked me how I would apply the pipe. I took a piece of board and

chalk and made a rough draft of the Roscoe oiler, showing him how to make the connection. The diagram hereto annexed, and marked Watson's Exhibit "A" is a substantial representation of the rough draft I made for Snyder on the piece of board with chalk.

(Here follows diagram marked page 67.)

68 Snyder looked at the diagram I so made on the board and left it in my engine-room at the Pioneer Woolen Mills. He told me he would see M'r Garratt about it. Some time after, I think the next day, he told me he had seen M'r Garratt regarding the proposition to put a melting pipe on the Roscoe cup, and M'r Garratt objected to the pipe being put on, as it would spoil the looks of the cup. In reply, I told Snyder were it my case Garratt could do one of three things: come out and make the cup work, or allow me to make it work, or take it off. Snyder replied, "I think you are right; I will see Garratt tomorrow about it." A day or so afterwards Snyder told me he had seen Garratt and told him according to my views, and Garratt had told him to try the melting pipe.

Question. After this do you know whether or not Jacob Snyder caused a melting pipe to be attached to the Roscoe cup then being used on the Spring Valley Steam Works? If so, state fully your knowledge on that point.

69 Answer. I know that he did, and he applied it himself. He consulted with me as to the size of pipe to use. I told him to put on quarter-inch pipe. He afterwards came to the engine-room of the Pioneer Woolen Mills—told me that he had no quarter-inch pipe. I then told him to use three-eighths of an inch pipe, or if he had no ⅜ inch, to use half-inch pipe. A day or two afterwards he came to me and told me he had applied the pipe, and that it worked splendidly, and invited me to come to his engine-room and see it. I went, and saw the oiler in operation with the pipe attached. One oiler was altered first. The nearest engine to the Woolen Mills was first altered.

Question. Do you know of your own knowledge, or from what Jacob Snyder told you, by whom the melting pipe was attached to the Roscoe cup—that is, who attached the pipe?

Answer. Jacob Snyder did the work. I know this of my own knowledge.

70 Question. Do you recollect whether or not in attaching this melting-pipe to the Roscoe cup, Snyder sent the cup down to Garratt's works to have a hole bored in the boss of the cup for he pipe, or whether that was done by Snyder at the water-works?

Answer. I cannot say.

Question. Have you knowledge of the Seibert's lubricating cup?

Answer. I have practical knowledge of the working of the cup.

Question. Has the Seibert's cup been applied to the engine of the California Sugar Refinery, where you are now at work; and, if so, when was it first attached to that eng ne?

Answer. It is. It was attached either in December, 1870, or January, 1871.

Question. Did you, at any time after the Seibert's lubricating cup had been attached to the engine of the California Sugar Refinery, have any conversations with William T. Garratt, as to his claim to the invention of said cup? If so, where was that conversation, and when was it?

71 Answer. I had a conversation with W. T. Garratt, on Fremont street, near Mission street, San Francisco, as near as I can fix it,

in the year 1871. W. T. Garratt expressed himself as annoyed with the claim Seibert made to his, Seibert's, lubricator (his claim for a patent); stated that Seibert had stolen the invention from him. He afterwards, at the same interview, took a memorandum or agreement from his desk purporting to be signed by Jacob Snyder, stating that the suggestion of putting on the melting-pipe to the Roscoe oiler originated from W. T. Garratt to him, Snyder, in Garratt's office. I expressed my surprise that Snyder should sign anything of the kind, and in substance told Garratt that Snyder told a different story outside or elsewhere. Garrett replied, "Snyder is not that kind of man." That was the substance of his reply. This was during business hours. There were several others in the office; who they were I did not know, and Garratt said he should want me on that case as a witness. I was so completely surprised at the production of that memorandum signed by Snyder
72 I made no further answer, and left the office.

Question. Are you familiar with the Roscoe oiler and its operation, and also with the Seibert cup and its operation?

Answer. I am. I had the Roscoe oiler on the engine at the Pioneer Woolen Mills, and also had it at first on the engine at the California Sugar Refinery, and at my suggestion the Roscoe oiler was taken off the engine at the California Sugar Refinery and replaced by Seibert's cup. This took place either in December, 1870, or January, 1871, and ever since then the Seibert lubricator has been in use on the engine at the California Sugar Refinery.

Question. How long have you been an engineer having charge of steam-engines?

Answer. Twenty years.

Question. Are you familiar with the construction and operation of a steam-engine?

Answer. I am. I am an engineer, and also a machinist.

73 Question. Do you consider the principle of the Roscoe oiler and of Seibert's lubricating cup the same or not?

Answer. They operate on the general principle. In the Roscoe cup the amount of lubricant discharged or fed to the engine is variable, and a mere matter of guess work. The lubricant in the Roscoe cup is at all times, or while working, exposed to considerable heat; it keeps the oil cooking, and is injurious to the lubricant. In the Seibert cup the lubricant is kept at its normal temperature, and the engineer has absolute control over the amount of the lubricant fed or discharged.

Cross examination by M. A. Wheaton, esq:

Question. In the operation of the Seibert lubricator, what is there about it that prevents the cooking of the oil which occurred in the Roscoe?

74 Answer. The steam comes in contact with a column of condensed water or a large reservoir of water. Such body of water interposing itself between the oil and the steam.

Question. How is that body of condensed water obtained?

Answer. Originally, in starting the cup, the condenser or reservoir is filled with cold water.

Question. What do you call the condenser or reservoir in the Seibert lubricator?

Answer. The outer cylinder or chamber, to which the pressure pipe is attached.

Question. When in use, does that condenser form a part of the pipe

which connects the steam from the steam-pipe of the engine with the bottom of the lubricator?

Answer. When in use, it forms a part of it. When in use it must be connected.

75 Question. In the Roscoe oiler, did the steam come in immediate contact with the lubricant, when in use?

Answer. It came in contact with the upper surface of the lubricant.

Question. Does the condensed water in Seibert's oiler prevent the cooking of the lubricant by heating it, or by cooling it? Which?

Answer. Seibert's oiler, when properly used, is subject to no heat. No cooking goes on when properly used.

Question. Are not the Seibert's lubricators put in the same position on the engine as the Roscoe oiler was?

Answer. Yes.

Question. Then, why is not the Seibert oiler exposed to the same degrees of heat and consequent cooking of the lubricant while in use that the Roscoe oiler was?

Answer. In the Seibert lubricator a body of cold condensed water is interposed between the lubricant and the steam. In the Roscoe
76 oiler the steam is admitted directly onto the surface of the lubricant; whatever steam condenses passes to the bottom of the cup and floats an equal amount of lubricant out along the same pipe.

Question. Then does that column of condensed water operate to heat the lubricant hotter than was done in the Roscoe oiler, or does it operate to keep it cooler when in use?

Answer. When in use in the ordinary way in the Seibert oiler the lubricant cannot get hot.

Question. Please state directly whether the column of condensed water in Seibert's oiler operates to heat the lubricant hotter than was done in the Roscoe oiler, or whether its operation tends to keep the heat of the lubricant reduced.

Answer. It tends to keep the temperature of the lubricant reduced, or at its normal temperature.

Question. In what respect did the pipes put on the water-works engines by Snyder operate in the same way as the condenser and its
77 connecting pipe in Seibert's oiler, if at all?

Answer. It did not operate in that manner at all.

Question. In the way that Snyder used those pipes, was there usually a column of condensed water standing in them between the steam in the steam-pipe and the lubricant in the oiler?

Answer. At times a column of cold condensed water stood in that pipe; when the water got cold it was drawn off for the purpose to get heat into the cup—heat or hot water into the cup.

Question. Did not Snyder get his condensed water for feeding the oilers and making the tallow flow, from those pipes that he attached to the Roscoe cups?

Answer. I cannot answer that question, because he did not get his condensed water for any such purpose.

Question. Could Snyder make that tallow flow a particle while the cup was in use, except by the use of condensed water?

78 Answer. With cold condensed water, no; with hot, yes.

Question. How do you mean by that answer that he was obliged to have cold condensed water, or hot condensed water—which?

Answer. Hot condensed water.

Question. Did those pipes which he attached furnish him with the hot condensed water which operated the oiler, or not?

Answer. Under certain circumstances they would.

Question. Did they furnish it as he used them?

Answer. By occasionally drawing off the cold condensed water which accumulated, they did.

Question. Can Seibert work his machine with tallow and cold condensed water?

Answer. I imagine it would be necessary to apply a heating-pipe.

Question. Is there a heating-pipe attached to the Seibert oilers which you have used?

79 Answer. No.

Question. Have they worked well without a heating-pipe?

Answer. Yes; those I have used.

Question. Then why do you imagine it is necessary to apply a heating-pipe to Seibert's lubricator in any case?

Answer. I have never used Seibert's lubricator with anything else but oil. I have never used tallow.

Question. In cases where the same lubricant is used in Seibert's lubricators, and the lubricators attached at the water-works, should the different lubricators be kept at the same temperature?

Answer. I should endeavor to keep them at the same temperature if oil was used in both lubricators. I have never used tallow in Seibert's lubricator, and I do not consider these which I have used fit for tallow.

80 The Seibert's lubricator, as I know it, is correctly represented by the model marked "Watson's Exhibit B" (which is put in evidence by the complainant). This model Exhibit B I do not consider fit for tallow.

Question. Why is not Exhibit B adapted to the use of tallow? Please explain fully.

Answer. Because the column of condensed water remaining cold would prevent the heat of the steam from coming in direct contact with the tallow. Consequently the tallow would congeal in the cup.

Question. Why cannot the column of cold water be drawn off often enough to keep the tallow hot in Exhibit B?

Answer. In Exhibit B it could by opening the feed-valve, and opening the connection with the lower end of the glass. It is quite possible to be done, but by continually opening the feed-valve you destroy the feeding efficiency of the cup.

Question. How is it possible to draw the condensed water out of the pipes which Snyder put on without destroying the feeding efficiency of the oiler?

81 Answer. In the Roscoe cup the feeder is at the letter I, on the diagram "Watson's Exhibit A." In drawing off the condensed water in the Snyder pipes I should open the cock J at the bottom of the cup (J, Watson's Exhibit A), letting out the cold condensed water and allowing a fresh supply of hot water and steam to follow, not interfering with the regular feed I.

Question. What fed through I in Exhibit A in the Roscoe cup?

Answer. Steam passed from the steam-chest through I to the interior of the oiler, and a similar amount of lubricant flowed back to the engine.

Question. What does I represent in Exhibit A; a pipe, a cock, or what?

Answer. A feed pipe and valve.

Question. Was there more than one pipe which let steam into those Roscoe oilers before Snyder put those melting-pipes on, and was not that pipe a straight perpendicular pipe that ran from the steam-chest up through the bottom of the oiler more than half-way to its top?

82 Answer. There was but one pipe, and such pipe being con

nected at or about I in Exhibit A, and did not go through the bottom of the oiler.

Question. Now is it possible to let that column of condensed water pass through these pipes holding it which Snyder put on as those oilers were then constructed and having it pass out through pipe I without its drawing out all the melting lubricant out of the oiler ahead of it?

Answer. No.

Thereupon the further examination of the witness, Charles Watson, was continued to Tuesday, August 18th, A. D. 1874, at 11 o'clock a. m.

Attest, &c.

J. F. O'BEIRNE, *Examiner.*

83 TUESDAY, *August 18th*, 1874.

Present, Hall McAllister, esq, solicitor for complainant; M. A. Wheaton, esq., solicitor for defendant.

Cross-examination of Charles Watson resumed:

Question. Would that let the condensed water out through I?

Answer. No; the water would pass out through the lower cock J.

Question. Was not any condensed water in those pipes of lower temperature than steam?

Answer. Condensed water is always at a lower temperature than steam.

Question. Did Snyder, in using those oilers with pipes at the water-works, always keep some condensed water in those pipes as far as you know?

84 Answer. I don't know as I could state what Snyder did. At times he removed that condensed water when it became cold or at too low a temperature, by the cock J.

Question. Why did you recommend, as a melting pipe for Snyder, the very kind of a pipe which operates as a cooler for Seibert?

Answer. I recommended the application of a melting pipe. The pipe was put up by Snyder much longer than I should have put it up, consequently a large amount of condensation took place in the pipe, and it was necessary frequently to draw off the condensed water so as to allow steam to follow and keep the lubricant melted.

Question. Still why did you recommend, as a melting pipe, one which operates only as a condenser, and consequently as a cooler?

Answer. I recommended a melting pipe which, had it been properly proportional by Snyder, would have operated as a melting pipe, and not as a condenser.

85 Question. Then did Snyder put on pipes as you recommended, or did he put them on differently from what you recommended?

Answer. I merely advised Snyder to put on a melting pipe, showing him in what position I would attach it, but said nothing to him regarding the length of said pipe.

Question. When you recommended melting pipes, did Snyder in fact put on condensing pipes?

Answer. The pipes he put on were too long. Too much condensed water collected in the pipe and interfered with the purpose for which the pipe was intended.

Question. Have those pipes always operated as condensing pipes when in use from the time when they were put on up to the present time, so far as you know?

Answer. I can't say that they operated as condensing pipes, although

condensation took place in them. They were not put on for any such purpose.

Question. Explain how it is possible for condensation to take
86 place on these pipes and the pipes not operate as condensing pipes.

Answer. For the reason when condensed water accumulated in the pipes it was removed, as otherwise it would entirely prevent the steam coming into contact with the lubricant.

CHA'S WATSON.

Subscribed and sworn to before me this 18th day of August, A. D. 1874.

JOS. F. O'BEIRNE, *Examiner.*

87 *Deposition of J. M. Stockman.*

Circuit court of the United States, ninth judicial circuit, district of California.

NICHOLAS SEIBERT } *vs.* W. T. GARRATT. } No. 1199.

Be it remembered, that on this 18th day of August, A. D. 1874, at my office in the United States courts building, in the city of San Francisco, personally appeared before me J. F. O'Beirne, an examiner in chancery, duly appointed by the circuit court of the United States for the ninth judicial circuit, in and for the district of California, JOHN M. STOCKMAN, a witness on behalf of the complainant in the above-entitled cause.

Hall McAllister, esq., appeared as solicitor for the complainant, and M. A. Wheaton, esq., as solicitor for the defendant.

And the said witness, having been by me first cautioned and sworn to testify to the truth, the whole truth, and nothing but the truth, in the cause aforesaid, did thereupon depose and say as follows; that is to say:

Examination-in-chief by Hall McAllister:

88 Question. What is your name, age, occupation, and place of residence?

Answer. My name is John M. Stockman; my age is 36 years and upwards; my occupation is pattern-maker, and my place of residence San Francisco.

Question. How long have you resided in San Francisco?

Answer. About eleven years and one-half.

Question. How long have you been a pattern-maker?

Answer. About thirteen years.

Question. Do you know Seibert's lubricating cup which is represented by the brass model marked "Watson's Exhibit B"?

Answer. I do.

Question. When did you first know of Seibert's lubricating cup?

Answer. I can't give a positive date, but I never knew of it until I made a pattern for it.

89 Question. At whose request did you first make a pattern of Seibert's lubricating cup?

Answer. At the request of Mr Seibert.

Question. Previous to your making for M'r Seibert a pattern of his cup, had you any knowledge of the existence of any such cup?

Answer. Not in that particular form. I know of the Roscoe cup, and made petterns of the Roscoe cup.

Question. When did you first make a pattern for William T. Garratt or W'm T. Garratt & Co., of the Seibert cup?

Answer. In July, 1870, to the best of my recollection.

Question. How long previous to your making the last mentioned pattern for W'm T. Garratt, had you been in the habit of making patterns for M'r Garratt?

Answer. I commenced making patterns for him in October, 1865, and have been making patterns for him ever since.

90 Question. Who came to your place of business and requested you to make for W'm T. Garratt a pattern of the Seibert cup?

Answer. James Hillman came to my place of business, at the corner of Mission & Fremont streets, in the second story of the same building of Garratt's foundry, and brought a drawing of the Seibert cup, and said he wanted a pattern made of it. I made a pattern of it for him.

Question. Do you recollect, at the time M'r Hillman applied to you to make a pattern of the Seibert cup, that you made some objection, because the cup did not belong to W'm T. Garratt or W'm T. Garratt & Co.?

Answer. I don't remember anything of the kind, although something of the kind may have occurred.

Question. At the time M'r Hillman applied to you to make a pattern of the Seibert cup, was he connected in business with William T. Garratt?

Answer. I think he was. I think the partnership, consisting of
91 William T. Garratt and James Hillman, was formed in February, 1870.

Question. Do you recollect after M'r Hillman applied to you to make a pattern of the Seibert's cup, that before doing so you called upon W'm T. Garratt and had a conversation with him upon the subject, and can you relate the substance of that conversation?

Answer. I don't remember of having any particular conversation in relation to making that pattern.

Cross-examination waived.

J. M. STOCKMAN.

Subscribed and sworn to before me this 18th day of August, A. D. 1874.

JOS. F. O'BEIRNE,
Examiner.

Thereupon the further examination of witnesses was continued until Sept'r 30th, at 11 a. m. of that day.

Attest, &c.

JOS. F. O'BEIRNE, *Ex'r.*

92 *Deposition of W. L. Philips.*

WEDNESDAY, *30th Sept., A. D.* 1874—11 a. m.

Examination resumed.

Circuit court of the United States, ninth judicial circuit, district of California.

NICHOLAS SEIBERT
vs.
W. T. GARRATT.

Be it remembered, that on this 30th day of September, A. D. 1874, at my office, in the United States courts building, in the city of San Francisco, personally appeared before me, Joseph F. O'Beirne, an examiner in chancery, duly appointed by the circuit court of the United States for the ninth judicial circuit, in and for the district of California, W. L. PHILIPS, a witness in behalf of the complainant in the above-entitled cause.

Cutler McAllister, esq., appeared as solicitor for the complainant, and M. A. Wheaton, esq., as solicitor for the defendant.

And the said witness, having been by me first cautioned and sworn to testify to the truth, the whole truth, and nothing but the truth,
93 in the cause aforesaid, did thereupon depose and say as follows, that is to say:

Examination in chief by Cutler McAllister:

Question. What is your name, age, occupation, and place of residence?

Answer. My name is W. L. Philips; my age is 55 years and upwards; my occupation is engineer, and my place of residence San Francisco.

Question. State what is your occupation and how long you have followed it.

Answer. My occupation is that of engineer. I commenced engineering in 1845.

Question. State what character of engines you have been in the habit of taking care of, and in what part of the State.

Answer. High-pressure engines. Mining engines, principally in California. Mining and mill engines, in Nevada County, the largest portion of the time. I commenced engineering in this State in 1851, and have followed it here ever since. I learnt engineering on the Western river steamers.

94 Question. State if you know the complainant in this action, M'r Seibert, and how long you have known him, and where.

Answer. I became acquainted with M'r Seibert in Nevada County, some time in the year 1868.

Question. State when, if at all, you first saw the application of steam or water to the lubricator marked "Watson's Exhibit B."

Answer. I first saw that principle in Nevada City as early as 1869.

Question. Who was in charge of that mill at that time, and who made the application of steam at that time?

Answer. M'r Seibert.

Question. Just state as near as you can how he applied the steam.

(Model introduced by complainant, marked "Phillips' Exhibit C.") Witness says:

95 Answer. The application of steam at that time, as made by Seibert, is exactly shown by Phillips' Exhibit C.

Question. State what time in the year 1869 it was that you first saw Seibert make that application.

Answer. It was either in January or February, 1869.

Question. How long was it in use there to your knowledge?

Answer. Well, I left Nevada City in the fall of 1869, and I think it was on the engine at the mill then. It was some time in the summer of 1869 that I last saw it.

Question. State if you know of Seibert's leaving Nevada City in the spring of 1869, and, if so, for what purpose he left, and whom he left in charge of the engine at the mill.

Answer. He left there either in the latter part of February or the fore part of March, 1869, for the purpose of getting up a model for a patent to be sent to Washington. He left me in charge of the mill during his absence.

96 Question. For what place did he leave, and how long was he absent?

Answer. For San Francisco, and was absent about ten days.

Question. Are you certain that at that time this model (Phillips' Exhibit C) had the pipe by which steam could be introduced into the bottoms of the cup?

Answer. Yes, sir; I am certain, because I used it every day to run the mill during his absence, except Sundays.

Question. Look at exhibit Watson's Exhibit B, and state what difference there is, if any, in the introduction of water or steam into the bottom of the cup than that in the principle used by Seibert in the mill at Nevada, in 1869, in regard to the same matter.

Answer. I think the same principle is involved.

97 Cross examination:

Questions by M. A. Wheaton, esq., solicitor for defendant:

Question. In Phillips' Exhibit C, was the piston holding the oil and water used in a perpendicular or horizontal position, which?

Answer. Horizontal, just as represented in that cup. (Pointing to Phillips' Exhibit C.)

Question. Was there a piston-head which separated the steam and water from the lubricant in that?

Answer. There was.

Question. In that, was it necessary that the steam should condense and form water before the machine would operate, or would it work by the pressure of steam alone against the cylinder-head, before that steam was condensed?

98 Answer. Well, it would feed by the pressure of steam—by the equilibrium. It would be the same whether condensed or not.

Question. Did it make any difference in the working of the machine whether there was any condensed water in it or not?

Answer. I think not.

Question. Have you ever used a lubricator like Watson's Exhibit B?

Answer. I have not used any of them myself, but have seen a number of them used.

Question. Is a column of condensed water necessary to their working well?

Answer. My understanding of these cups is that they work better with water. I have never used any myself. It has just occurred to me that I have used , which I did not recollect a few minutes ago.

I helped to overhaul and make two short trips on a little steamer on which I used two of those cups.

99 Question. In those cups (Watson's Exhibit B), do you consider a column of water an absolute necessity to their working well?

Answer. I do not consider it an absolute necessity, because they will work well with steam; but I think the water coming in contact with the lubricant would work better and more economical.

Question. Which is the heavier, the water or lubricant, when that lubricant is oil or tallow?

Answer. I suppose that would depend on the kind of lubricant you used. I don't know; I never tried that. The lubricant must be the lighter, because it floats on the top.

Question. If the lubricant and steam are in the same vessel, which sinks to the bottom and which remains on top?

Answer. The oil would go to the bottom and the steam remain on top.

Question. Then if steam was let in at the bottom of Watson's Exhibit B, underneath the lubricant or oil, would not the steam pass

100 up through the oil, if it did not condense into water, and thus fail to drive the oil out ahead of it?

Answer. I think it would carry a portion of the oil with it.

Question. Please tell me in what respect the two exhibits—B and C—worked exactly alike.

Answer. The connections of the pipe; the principle is exactly the same.

Question. Is that all?

Answer. I think the main similarity is in the connecting pipes.

Redirect:

Question. In Exhibit C, would a column of steam injected into the cup through the pipe naturally condense, and what would be the effect of such condensation as to the expansion of the piston?

101 Answer. Certainly there would be some condensation. The expansion or contraction is due to the heat.

W. L. PHILIPS.

Subscribed and sworn to before me this 30th day of September, A. D. 1874.

JOS. F. O'BEIRNE, *Ex'r.*

102 *Deposition of Jacob Libomkin.*

Circuit court of the United States, ninth judicial circuit, district of California.

NICHOLAS SEIBERT } *vs.* } No. 1199.
W. T. GARRATT. }

Be it remembered that on this 30th day of September, A. D. 1874, at my office, in the United States courts building, in the city of San Francisco, personally appeared before me, Jos. F. O'Beirne, an examiner in chancery, duly appointed by the circuit court of the United States for the ninth judicial circuit, in and for the district of California, JACOB LIBOMKIN, a witness on behalf of the complainant in the above-entitled cause.

Cutler McAllister appeared as solicitor for the complainant and M. A. Wheaton, esq., as solicitor for the defendant.

And the said witness, having been by me first cautioned and sworn to testify to the truth, the whole truth, and nothing but the truth
103 in the cause aforesaid, did thereupon depose and say as follows, that is to say:

Examination-in-chief by Cutler McAllister:

Question. What is your name, age, occupation, and place of residence?

Answer. My name is Jacob Libomkin; my age is 36 years and upwards; my occupation is fireman in Pioneer Woolen Factory, and my place of residence San Francisco. I have lived 19 or 20 years in San Francisco, and have been a fireman; I have been a fireman on steam engines or mills. Have been 12 years this fall at the Pioneer Woolen Mills.

Question. Were you employed at the Pioneer Woolen Mill when Cha's Watson was engineer and while Jacob Snyder was engineer at the Spring Valley Water Works, near the Pioneer Woolen Mills?

Answer. I was.

Question. Look at diagram marked "Watson's Exhibit A," and say if you have seen it before, and when and where.

104 Answer. I have; in the engine room of the Pioneer Woolen Mills, on a piece of pine board, about 12 inches wide, drawn with chalk.

Question. Who was that drawing made by, and when did you see it?

Answer. M'r Cha's Watson made that drawing. I think it was in 1869 or 1870; I can't recollect.

Question. Did you see M'r Snyder there at or about that time?

Answer. Yes, sir. He was at that time engineer in the Spring Valley Water Works.

Question. What discussion was there, if any, at that time about this diagram, or why was it drawn, or what was it drawn for?

Answer. I came in the evening into the engine-room, and asked M'r Watson what this drawing was for. He told me, it is not for us. He said there is a pipe which we are going to put in the main pipe for melting the tallow in Snyder's cup; they have some trouble about it.

105 Cross-examination by M. A. Wheaton, esq., solicitor for deponent:

Question. Are you certain that that occurred before February, 1870?

Answer. I think I can be positive.

JACOB LIBOMKIN.

Subscribed and sworn to before me this 30th day of September, A. D. 1874.

JOS. F. O'BEIRNE,
Examiner.

Thereupon the further examination of witnesses was continued until the 9th day of December, A. D. 1874.

106 *Deposition of J. H. Weed.*

Circuit court of the United States, ninth judicial circuit, district of California.

NICHOLAS SEIBERT } No. 1199.
vs.
W. T. GARRATT. }

Be it remembered that on this 9th day of December, A. D. 1874, at

my office, in the United States courts building in the city of San Francisco, personally appeared before me, Joseph F. O'Beirne, examiner, duly appointed by the circuit court of the United States for the ninth judicial circuit in and for the district of California, JOSEPH H. WEED, a witness on behalf of the complainant in the above-entitled cause.

Cutler McAllister, esq., appeared as solicitor for the complainant, and M. A. Wheaton, esq., as solicitor for the defendant.

And the said witness, having been by me first cautioned and sworn to testify to the truth, the whole truth, and nothing but the truth in the cause aforesaid, did thereupon depose and say as follows, that is to say:

107 Examination-in-chief by Cutler McAllister, esq.:

Question. What is your name, age, occupation, and place of residence?

Answer. My name is Joseph H. Weed; my age is 48 years and upwards; my occupation is brass-founder, and my place of residence San Francisco.

Question. How long have you followed your present business, and where?

Answer. I have followed it in San Francisco about 20 years.

Question. Do you know the lubricator marked "Phillips' Exhibit C" in this case? If so, state how long you have known it.

Answer. I made that in May, 1870; it was made in my shop.

Question. How long have you known those lubricators?

Answer. Since May, 1870.

108 Question. How long have you known, if at all, the lubricator, "Watson's Exhibit B" on file in this case?

Answer. I made them a little different from these, but the same in principle, about 2 weeks after I made "Phillips' Exhibit C."

Question. State particularly the difference between those you have made at the time last spoken of and "Watson's Exhibit B."

Answer. The ones I made had no valve from the glass; instead of the valve at the bottom of the glass they had a valve at the bottom of the receiver.

Question. Look at the lubricator now shown you, marked "Weed's Exhibit D," and state in what, if anything, this differs from the lubricators made by you, as you have just testified.

Answer. "Weed's Exhibit D" is the kind I made. There is no difference.

Question. What is the difference in principle between the operation of "Phillips' Exhibit C" and the operation of "Weed's Exhibit D?"

109 Answer. "Phillips' Exhibit C" is horizontal, requiring a piston to keep the water and oil separate. "Exhibit D," being perpendicular, the water and oil are kept separate by the difference in their specific gravity; otherwise I see no difference except in details. As to show the amount of oil in the cup, one shows it by the piston and the other by the glass. There is a stationary gauge which belongs to "Phillips' Exhibit C," and which is not on it, and is fixed alongside of the piston.

Question. What is the difference in principle between the Weed exhibit and the Watson exhibit?

Answer. There is none.

Question. Why was the Phillips' exhibit changed by Seibert into the form as given by the Weed exhibit, if you know?

Answer. It was done at my shop. It was changed by Seibert's or-

ders. He gave me the reason that he wanted to separate the oil
110 from the water, and by turning it perpendicular he could do away with the piston.

Question. What was the particular objection to the piston, and what was the advantage gained by changing it?

Answer. The objection to the piston was that we could not keep it tight without making so much friction that the column of water would not overcome the friction. The advantage gained was removing all friction from the piston.

Cross-examination:

Question. In "Phillips' Exhibit C" does it make any difference whether the water is heavier than the oil, or not?

Answer. I should say none.

Question. Then, does the difference between the specific gravity of the two bodies, oil and water, enter into the working principle of "Phillips' Exhibit C"?

111 Answer. Not in my belief.

Question. In that one respect, then, does "Phillips' Exhibit C" and "Watson's Exhibit B" work upon the same principle?

Answer. I should say not.

(Complainant offers "Weed's Exhibit D" in evidence.

JOSEPH H. WEED.

Subscribed and sworn to before me this Dec. 9th, 1874.

JOS. F. O'BEIRNE, *Ex'r.*

112 *Deposition of N. Seibert.*

Circuit court of the United States, ninth judicial circuit, district of California.

NICHOLAS SEIBERT } *vs.* W. T. GARRATT. } No. 1199.

Be it remembered that on this 9th day of December, A. D. 1874, at my office, in the United States courts building, in the city of San Francisco, personally appeared before me, Joseph F. O'Beirne, an examiner, duly appointed by the circuit court of the United States for the ninth judicial circuit, in and for the district of California, NICHOLAS SEIBERT, a witness on behalf of the complainant in the above-entitled cause.

Cutler McAllister, esq., appeared as solicitor for the complainant, and M. A. Wheaton, as solicitor for the defendant.

And the said witness having been by me first cautioned and sworn to testify to the truth, the whole truth, and nothing but the truth,
113 in the cause aforesaid, did thereupon depose and say as follows, that is to say:

Examination-in-chief by Cutler McAllister:

Question. What is your name, age, occupation, and place of residence?

Answer. My name is Nicholas Seibert; my age is 44 years and upwards; my occupation is machinist and engineer; and my place of residence, San Francisco.

Question. How long have you followed this profession, and where?

Answer. In California, since 1851.

Question. Look at Watson's, Phillips', and Weeds' exhibits, sta

you have seen them before; and, if so, when, and what you know of their invention?

Answer. In 1868 I was then engineer at the flouring mill of Mess'rs Torson & Clark, Nevada City. I then conceived the idea of making a lubricator like "Phillips' Exhibit C." After making a rough-
114 working model, I put it on the engine and tried its working qualities, either in the fall of 1868 or spring of 1869; it worked well enough to induce me to have a model made and sent to the Patent Office for letters patent, which I did in March, 1869. The model was made by W. T. Garratt, and I obtained a patent on it September 14th, 1869. I came to San Francisco in 1870 for the purpose of having lubricators made after that design. After making 2—putting one on the engine of the Pacific Foundry in the beginning of May, 1870—I had some difficulty in making it work, it being a piston-cup, and the piston coming hot would expand so much that it would not work until the perpendicular pipe attached thereto, for the purpose of supplying the cup with steam, would fill with condensed water, then the cup would work properly, because the metallic packing on the piston cooled. When I discovered that the water in the pipe was the cause of the cup working better, I then concluded to do without the piston and set the cup on end, and apply water under the oil, knowing that the oil would float on the surface, and the condensed water being introduced
115 into the bottom force it into the steam-chest and cylinder, that gave rise to "Weed's Exhibit D," which I made at the time. I did this about the middle of May, 1870, applied for a patent, which was rejected on the ground of interference with the Absterdam patent. I then made another model which was on the same principle as the last-mentioned cup, and applied to the Scientific American Co. to obtain a patent for me, which they did February 14th, 1871.

When Mr Garratt made the model "Phillips' Exhibit C," in March, 1869, which was to be sent to the Patent Office, I explained all the connections of the cup; how it was to be operated. The principle of "Phillips' Exhibit C" is this—the cup having a piston, and the piston-rod coming through one end of the cup into the open air, having a certain area which destroyed the balance of pressure between the two ends—there being steam admitted at the opposite end of the piston-rod, and the pressure on that end being as much more as the area of the piston-rod was less at the other end, it coming into the open air. This extra pressure was sufficient, as I supposed, at that time to insure a
116 proper working of the cup.

Somewheres about the first of May I discovered that condensed water and the perpendicular pipe attached to the cup, through which the steam is admitted to the cup, is a great help to the working of the cup. That being a hydrostatic pressure forcing the water against the piston is the same principle which I employ in "Weed's Exhibit D," and also "Watson's Exhibit B," the cups in other respects differ. The reason that I substituted the water under the oil instead of using a piston was—first, that the cup with the piston did not work properly at all times, because when the steam was let on the packing would expand and would interfere with the action of the cup; and secondly, because it was much cheaper to make the lubricator without the piston, and it would also work better. Then I had "Weed's Exhibit D" made in the middle of May, 1870, and I gradually improved upon it until I arrived at the form as shown in "Watson's Exhibit B," but never changing the principle.

117 Question. What is the difference in the working principle used in the Roscoe cup, and the principle used by you in these exhibits?

Answer. The difference is that the Roscoe works with hot steam applied to the top of the tallow in the cup through a pipe connected with the steam pipe or chest, thereby melting tallow which, in its melted state, would flow back through the same pipe through which the steam entered the cup and thereby lubricate the engine. These 3 exhibits having a common principle of pressure of water applied under the lubricant and thereby forcing it out through the top of the cup into the steam chest or pipe, lubricating the valves or cylinder. The principle in "Phillips' Exhibit C" is the same as that in "Watson's Exhibit B," as far as the pressure of water is concerned, in both exhibits the lubricant being forced up by the pressure of water, although I say in my letters patent to regulate steam against the end of the piston in "Phillips' Exhibit C," the pipe containing the steam will condense and fill with water in a very short time after steam is admitted to the

118 pipe, and the oil discharged from the opposite end of the cup balances the pressure of steam in the pipe which feeds the cup at the other end, in that respect the principle is the same as "Weed's Exhibit D" and "Watson's Exhibit B," but the piston works on another principle as explained before.

The principle of "Weed's Exhibit D" and "Watson's Exhibit B" is, when the cup is filled full of oil and the discharge pipe and the feeding pipe being connected on the steam pipe of the engine coming from the boiler, and the pressure therein being equal where the discharge and feed pipes connect, consequently the pressure within the cup is also equal to the pressure within the steam-pipe, but the feed pipe being connected at the extreme bottom of the cup and some 18 or 20 inches higher than the discharge-pipe and that containing a column of condensed water which is heavier than the steam, and only being on one side of the cup causes a hydrostatic pressure under the oil which forces out the oil through the discharge pipe.

119 Question. Under the principle and in working these 3 exhibits is it necessary or desirable to allow steam to mix or come in contact with the lubricant?

Answer. It is not necessary and is highly injurious to allow it, for the reason that in the first place it causes the oil and the water to intermingle so as to look like milk, and you could not tell whether you were feeding oil or water; and in the second place it thickens the oil more or less by being heated before entering the cylinder and therefore does not distribute itself so well in the cylinder as it would otherwise, or as it would without being cooked before entering the cylinder.

Question. Did you ever see any engine at the Spring Valley Works with a lubricator working on the same principle as any of those here?

Answer. I have not.

Question. Did you ever see any engine at the Spring Valley Water Works with a pipe as set forth in Exhibit A? If so, state

120 when you saw it.

Answer. I saw it in the fall of 1870. "Watson's Exhibit A" is a true exhibit of that lubricator when I saw it out at the Spring Valley Water Works, except the valve at the bottom and the one near the top. I don't know how it operated; never saw them work it.

(The Exhibits A, B, C, and D were offered and received in evidence without objection.)

Attest, &c.

JOS. F. O'BEIRNE, *Ex'r.*

Examination continued to Dec'r 10th, 1874.

Attest, &c.

JOS. F. O'BEIRNE, *Ex'r.*

121 THURSDAY, *December 10th*, 1874.

Present, Cutler McAllister, esq., s licitor for complainant, and M. A. Wheaton, esq., solicitor for defendant.

Examination of N. Seibert resumed.

Cross examination:

Question. In your patent of Sept. 14th, 1869, does this expression occur, "a cock admits steam behind the piston and forces it slowly forward, while another cock at the opposite end of the cylinder allows the tallow to pass to its destination"?

Answer. It does.

Question. In that patent did you say anything about hydrostatic pressure?

Answer. I did not.

Question. Why did you not?

122 Answer. Because at that time I did not thoroughly understand that another principle was involved until I discovered it in 1870, after further experiment.

Question. By another principle in your last answer do you mean the principle of hydrostatic pressure?

Answer. I mean the condensed water accumulating in the pipe, and that of itself being a pressure on the piston independent of the steam pressure which aids the working of it.

Question. If a steam power was sufficient to force the piston forward, was the slight additional weight of a column of water which was actually used of any perceptible advantage?

Answer. It was, from the fact that it cooled the piston and then it would work better.

Question. Was that cooling owing to the difference between the weight of water and steam or was it in the difference of temperature?

123 Answer. Both.

Question. Did the difference between the weight of water and the weight of the same quantity of oil on the opposite side of the piston-head make any difference in the working of the lubricator?

Answer. Well, that is the position in which the lubricator is in when charged; it would have to be in that position when worked.

Question. When in that position what difference would it make whether the oil or the water was of the greater specific gravity?

Answer. I do not know whether it would make any difference, as I only tried lard oil.

Question. When did you first discover the benefit of hydrostatic pressure, as applied to lubricators as shown in the various exhibits?

Answer. Some time in the early part of May, 1870.

124 Question. When did you first have any conversation about lubricators with the witness Watson?

Answer. I cannot remember distinctly—it was some time in the fall of 1870, or spring of 1871.

Question. When did you first know that the defendant Garrett was manufacturing lubricators?

Answer. I knew that he had been manufacturing Roscoe and other lubricators of the old style since I first became acquainted with him in this country. I saw them in his shop in March, 1869, when he made a fac simile of the model Phillips Exhibit C for me.

NICHOLAS SEIBERT.

Subscribed and sworn to before me this 10 Dec'r, 1874.

JOS. F. O'BEIRNE, *Examiner.*

The further examination of witnesses herein adjourned to January 19th, 1875.

Attest, &c.

JOS. F. O'BEIRNE.
Ex'r, &c.

125 *Deposition of W. T. Garratt.*

Circuit court of the United States, ninth judicial circuit, district of California.

NICHOLAS SEIBERT *vs.* W'M T. GARRATT. } No. 1199.

Be it remembered, that on this 19th day of January, A. D. 1875, at my office, in the United States courts building, in the city of San Francisco, personally appeared before me, Jos. F. O'Beirne, an examiner in chancery, duly appointed by the circuit court of the United States for the ninth judicial circuit in and for the district of California, WILLIAM T. GARRATT, a witness on behalf of the defense in the above-entitled cause.

Cutler McAllister, esq., appeared as solicitor for the complainant, and M. A. Wheaton, esq., as solicitor for the defense.

And the said witness, having been by me first cautioned and sworn to testify to the truth, the whole truth, and nothing but the truth
126 in the cause aforesaid, did thereupon depose and say as follows, that is to say:

Examination-in-chief by M. A. Wheaton:

Question. What is your name, age, occupation, and place of residence?

Answer. My name is William T. Garratt; my age is 45 years and upwards; my occupation is brass founder, and my place of residence San Francisco.

Question. What was your business in 1869?

Answer. That of brass founder.

Question You are the defendant in this writ?

Answer. I am.

Question. Please state fully the circumstances attending the construction of the first condensing pipe for lubricators, such as is described in the patent granted to you, mentioned in the complaint, so far as you know the same.

Answer. In 1869, I put two of Roscoe's oilers on the water-works

engine at Black Point. After they had been on several days,
127 the engineer, M'r Snyder, came to my place, and stated that the lubricators did not work well to his satisfaction, and wanted me to go out and see what the trouble was. I called upon M'r Moore, who was the person through whom I got the agency for making these Roscoe oilers, and had him to go out with me. On examination of the lubricators, we found that the tube, termed the pulsation tube, had been left out in their manufacture. We had the lubricators taken back to my works and the pulsation tubes put in. After which they worked better, but not sufficient to satisfy the engineer. He again came to my place and wanted me to take those lubricators off, saying that they would or could not condense enough water for his engines, and wanted me to put on what they term two regular oil globes. I told him that I could make them work, and did not want him to take them off. I made a sketch on the floor of what I would do with them in relation to a condensing pipe. He looked and said he believed that could work. I had him send in
one the lubricators at once, and then I fixed it for the condenser,
128 had it fixed, which he then tried. I told M'r Snyder to put the pipe on, about 6 feet long, condensing pipe with a regulating cock. I told him that with that he could open that regulating cock and drive all the oil out in one minute with a column of water above, or he could be a week about it. After it had been tried several days, I think M'r Snyder called at my place and told me about the working of it.

Question. Please describe fully how and what that pipe connected?

Answer. It connected the bottom of the lubricator to the steam pipe. The connection was above the lubricator on the steam pipe so as to get a head of 3 or 4 or 5 feet.

Question. How did the relative position of the pipe that you have spoken of with the lubricator, compare with the relative position with the cylinder F to the lubricator as shown by Exhibit B attached to the complaint?

Answer. About the same thing—for instance, the working would be the same.

129 Question. Did you visit the water-works afterwards and see the pipe as you directed it to be put on and in operation?

Answer. I visited the works time and time again, and saw it in operation.

Question. Explain how it did operate.

Answer. The condensing pipe filled with water a regulating cock at the bottom of the condenser; by being opened to allow the water to pass through into the lubricator, the lubricator being lower than the column of the water, the water would force the lubricant out of the lubricator, being in working as you might call it by hydrostatic pressure.

Question. Were the pipes which you put on those lubricators in fact condensing pipes?

Answer. They are, and were put on for no other purpose.

Question. How long did they continue in successful operation at the water-works?

130 Answer. They are still in successful operation, and have been there ever since they were put on. They were put on in the latter part of October, 1869.

Question. Did the condensed water in those lubricators come in direct contact with the lubricant without the intervention of any cylinder head or diaphragm?

Answer. Came in direct contact.

Question. How did the condensed water operate to drive the lubricant out of the lubricator to the place of use, or into the steam cylinder?

Answer. By over amount of pressure of water on the lubricant, coming underneath the lubricant in the lubricator, the water being heavier than the lubricant, the water in the condensing pipe being higher than the lubricant in the lubricator.

Question. Did the lubricant flow out of the lubricator towards its top or towards its bottom?

131 Answer. Towards its top: at the top.

Question. Did those condensing-pipes at the water-works, when attached to the Roscoe lubricators, as you have described them, make the operation of the lubricators precisely the same as the operation of lubricator as described in Exhibit B, attached to the complaint, or not?

(Objection: question leading.)

Answer. Yes.

Cross-examination:

Question. That was the specific complaint made to you in regard to those lubricators by the engineers?

Answer. That they would not eject sufficient lubricant for to lubricate the engines.

Question. By reason of what?

132 Answer. Not sufficient condensation.

Question. In other words, the condenser then attached to the lubricator did not give forth sufficient water to displace or force out the lubricant?

Answer. There was not sufficient condensation room. There would at times be sufficient, and at others not. It seemed that of a hot day there would not be, because the air would not be sufficiently cold to condense the steam in the lubricator.

Question. What was the lubricant that was being used on these engines?

Answer. They had oil and tallow; tallow was the principal. At the time I went to the works they had tallow. I do not know whether I was there when oil was used. I never looked but once into the lubricator, and that was when I went to look after the pulsation-tube. And they have never had any trouble there since, since the condensers were put on.

133 Question. At the time that you looked into the lubricators and altered them for a pipe, were they using tallow then as a lubricant?

Answer. At the time I went to examine them they were using tallow, and at the time they were altered I presume they were using tallow. I presume they used tallow all the time. I altered them for condensers.

Question. From the moment you put on the pipe, you say that there had been no complaint about the lubricators; is that correct?

Answer. There was none to me.

Question. When the pipes were first put on, what was your object in making it 3 or 4 or 5 feet?

Answer. The object was to get a column of water; plenty of water.

Question. When originally put on, how many cocks were there on this pipe between the lubricator and the steam-pipe?

134 Answer. There were two; one put on by my orders, which was the regulating cock, and was at the bottom of the condenser, or thereabouts; the other cock, at the top of the condenser, attached right to the steam pipe, was put there merely to shut off the steam while they were working in putting up the lubricators.

Question. Was that pipe ever shortened?

Answer. I know it was.

Question. For what reason was it shortened?

Answer. The reason given me by the engineer was that the water would get too cold, there was too much of it exposed, and would have a tendency to chill the tallow.

Question. Did you ever hear, or were you ever told, that before this pipe was put on occasionally the engineer would wrap blankets around the lubricators?

Answer. I was not. The first intimation of it was when I was
135 told that M'r Watson, another engineer—a temporary engineer—did so. This was after the condensing-pipe was put on; but can't say whether it was before or after the pipe was shortened. Watson wrapped up the pipe and all in blankets, which was not necessary.

Question. How much of that pipe did they cut off?

Answer. About four feet, I should judge.

Question. When and where did you first see the lubricator marked "Weed's Exhibit D?"

Answer. I think it was at M'r Booth's foundry.

Question. When was that?

Answer. It was some time after I put the pipes on the Spring Valley Water Works; about a year after.

Question. Did you then have a model made of it?

Answer. Yes.

136 Question. How long was this before you applied for your patent?

Answer. Somewheres about 6 months; can't tell exactly; don't know how long.

Question. Did you put the pipes on any other lubricator than those at the Spring Valley Works at or about that time? If so, where?

Answer. I was to have had an order from M'r Graves, the chief engineer of the Central Pacific Railroad, for about the same thing; but before I got the order Graves was dismissed, and I did not get the order. I don't remember that I did.

Question. Give us, as near as you can recollect, the time you put a similar pipe on any of the lubricators than those of the Spring Valley Water Works; and, if so, upon what lubricators did you put them?

Answer. I can't remember; although I do remember that about the time the stir was made by this man Seibert I put some on. I re-
137 member putting some on at that time, but I do not remember of having put on any before that time, except at the Spring Valley Water Works.

Question. Was the complaint made by the engineer of the Spring Valley Works the only complaint you received about a difficulty with those lubricators in this respect?

Answer. That was about all.

Question. Did you ever manufacture for complainant any lubricator, the duplicate of "Phillips' Exhibit C;" if so, when?

Answer. I manufactured for him a lubricator similar to the one you have shown me. I can't remember when it was, but it was some time before he and I quarrelled about this matter.

Redirect:

Question. How early did you make lubricators that operated by water coursing out the lubricant with glass bodies?

138 Answer. As soon as I got the agency. As soon as I could get

the glass bodies made in New York and sent out here. It was in the spring of 1868.

Question. How early did you know of the siphon as shown in Exhibit B of the complaint to be used in lubricators?

Answer. The siphon was supposed to be an invention of M'r Hillman, my partner in 1869, and M'r Hillman made an application for a patent, but afterwards found it was an old thing and withdrew his application.

Recross:

Question. Was there anything connected with those glass body lubricators which you got out in 1868, which did not belong to the Roscoe oiler as patented?

Answer. Yes, the guage which is on the rod to indicate the amount of oil taken off. In all other respects it was to be about the same, except the body was transparent.

W. T. GARRATT.

Subscribed and sworn to before me this 19th day of January, A. D. 1875.

JOS. F. O'BEIRNE,
Examiner.

139 *Deposition of J. Snyder.*

Circuit court of the United States, ninth judicial circuit, district of California.

NICHOLAS SEIBERT
vs.
W'M T. GARRATT. } No. 1199.

Be it remembered that on this 19th day of January, A. D. 1875, at my office in the United States courts buildings in the city of San Francisco, personally appeared before me, Joseph F. O'Beirne, an examiner in chancery, duly appointed by the circuit court of the United States for the ninth judicial circuit in and for the district of California, JACOB SNYDER, a witness on behalf of the defense in the above-entitled cause.

Cutler McAllister, esq., appeared as soliciter for the complainant, and M. A. Wheaton, esq., as solicitor for the defense.

And the said witness having been by me first cautioned and sworn to testify to the truth, the whole truth, and nothing but the truth, in the cause aforesaid, did thereupon depose and say as follows, that
140 is to say:

Examination in-chief by M. A. Wheaton, esq.:

Question. What is your name, age, occupation, and place of residence?

Answer. My name is Jacob Snyder; my age is 55 years and upwards; my occupation is engineer, and my place of residence San Francisco.

Question. What engines were you running in the latter part of 1869?

Answer. The Spring Valley Water Works, at Black Point, San Francisco.

Question. What kind of lubricators did you then use on those engines?

Answer. Roscoe lubricators—the same as are used there now.

Question. What changes, if any, were made in those lubricators in the fall of 1869?

Answer. There was a pulsation tube put in and the condensing-pipe was made shorter.

141 Question. When were those condensing-pipes first put there?

Answer. Some time after the lubricator was first put up; can't give the time.

Question. What, if you know, were those condensing-pipes put there for?

Answer. They were put there to force the lubricant out of the lubricator.

Question. By whose directions were they put there?

Answer. M'r Garratt's.

Question. How many lubricators were used at Black Point to which condensing-pipes were attached in 1869?

Answer. Two lubricators. One to each engine.

Question. Have those lubricators with the condensing-pipes been there in successful use ever since 1869?

Answer. Yes, sir.

142 Question. Were those pipes put there for any other purpose than to get more condensed water and the pressure of condensed water?

Answer. No, sir; that is the purpose they were put there for.

Cross-examination:

Question. What specific complaint did you make to M'r Garratt about the lubricators?

Answer. When they were first put up they did not work very well. I told M'r Garratt that they did not work well, so that he might come out and look at them. I did not know the reason they would not work. He said he would make them work.

Question. Did you know Watson who was engineer of the Pioneer Woolen Mills near you at that time?

Answer. Yes.

143 Question. Did you complain to him that the tallow would congeal in the cup, and therefore would not work, or in substance like that?

Answer. I don't remember of having anything to say to him about it.

Question. Do you say that you and he did not consult about the matter at that time?

Answer. Not to my recollection.

Question. Did you see him constantly at that time?

Answer. No; I passed his engine-house every day, twice a day. I might pass it a week every day and not see him.

Question. Did Watson ever show you a draft of the pipe to be attached to your lubricators, or which he recommended to you?

Answer. No, sir; Watson never showed me a draft, nor do I recollect him recommending anything about them.

144 The further examination of this witness continued to January 21st, 1875, at 2 o'clock p. m.

Attest, &c.:

JOS. F. O'BEIRNE, *Ex'r.*

JANUARY 21ST, 1875—2 p. m.

Ordered examination continued to January 22d, at 10 o'clock a. m.

Attest, &c.:

JOS. F. O'BEIRNE,
Examiner.

JANUARY 22D, 1875.

Present, Cutler McAllister, solicitor for complainant, and M. A. Wheaton, solicitor for defendant, and the witness, Jacob Snyder.

Cross-examination of witness resumed:

Question. Please state the character and situation of the engine-house belonging at that time to the Spring Valley Water Works, and how the engine was placed in it.

145 Answer. The engine-house fronts on the bay, to the northward. The engine and boiler-house cover about 6,000 square feet, as near as I can come at *at*. The engine-house is 80 feet deep; I don't know the width; built of brick; has windows in it. The furnaces are about 25 feet from the engine, fronting east. The engines are north and south, about fifteen feet from the door, I suppose.

Question. When the front door was open, does not the cold wind, if there is any, blow right on the engines?

Answer. Yes, sir.

Question. Did you ever hang a piece of woolen cloth over the cup to keep it warm?

Answer. Yes, sir.

Question. Did you ever say to Elliott, the superintendent of the water-works, that you did it to keep the tallow melted?

Answer. I said I did it to keep the wind from congealing the tallow.

146 Question. Did you ever wrap the pipe you say you put on by Garratt's orders with a blanket, or a portion of one, before the pipe was shortened?

Answer. No, sir.

Question. Are you positive of that?

Answer. Yes, sir; I am.

Question. Have you not so heretofore stated—that is, that you did so, in a previous deposition before this commissioner?

Answer. Don't think I did.

Question. If you have, which is correct; the statement you made then or the statement you make now?

Answer. Well, I think the statement I make now is correct; do not remember to have made any other statement; it is so long since.

Question. After the pipe was shortened, did it not keep the tallow warm by itself?

Answer. Yes, sir.

147 Question. How many feet were taken off the pipe?

Answer. Four (4) feet.

Question. Could the flow of water into the lubricator through that pipe as it originally was be regulated by the cocks?

Answer. Yes.

Question. What lubricant did you use in lubricators and how many times did you use a different one?

Answer. I used oil and tallow both; sometimes I used oil and again tallow. Now I am using oil altogether.

Question. How many times had you used oil in those lubricators prior to your last giving your deposition in this matter?

Answer. That would be impossible for me to say. I have tried it frequently to see which I liked best.

Question. Had you used oil more than once prior to the giv-

148 ing of your last deposition in this matter?

Answer. I couldn't say positively. I have used it off and on, as I have said—oil or tallow.

Question. Give the best of your recollection whether or not you had used oil in those lubricators more than once prior to your last testifying herein.

Answer. I think I did.

Question. Did you not state at the trial of "Seibert vs. Garratt," before the jury, that you had never used oil but once in those lubricators?

Answer. I don't remember if I did.

Question. If you did so state, was that correct?

Answer. It was, to the best of my knowledge, correct.

Question. Did you not state—and I read to you the judge's notes of your testimony upon the trial of the last-named case—as follows: "I always used tallow, except oil on one day to see how it worked"?

149 Answer. Well, I don't remember of saying it; I suppose I must have said it, if it is down there.

Question. Did you never speak to Watson about the pipe?

Answer. Now I come to think about it, I think we may have had a talk about the pipe; I do not know to what purpose hardly.

Question. How far down the cup upon an average would the tallow be melted, prior to putting on the pipe, and keep so?

Answer. The tallow would be melted before put in and keep so. I could not average it; could not look inside the cup and tell; but when there was a cold wind it would congeal; couldn't say whether the lower part would congeal first or the top.

Question. What was the average amount of steam you used?

Answer. From 20 to 25 pounds of steam.

Question. Did you tell Richmond the long pipe would not work

150 because it would not keep the tallow hot, or words to that effect?

Answer. I don't remember that I did. I don't remember what I said to Richmond; that is the fact about it.

Question. Did you not so testify before the jury in this matter in 1871?

Answer. I don't remember now if I did; if I said so it was correct.

Question. Did you not want or need circulation through the cup?

Answer. Of course.

Question. Did you not state to M'r Morgan, the attorney who tried the case referred to, one Sunday at the engine-house, at Black Point, that the pipe was put on to keep the tallow hot?

Answer. No; I don't think I did.

Question. Can't you state positively whether you did or not, and this statement was made in presence of M'r Seibert?

151 Answer. I don't think I know M'r Morgan.

Question. Do you know, by sight, the attorney who cross-examined you in the case just referred to?

Answer. I think I would know him if I saw him.

Question. He is the person to whom I allude. Can you not state positively whether or not you made to him, at the time and place above specified, in Seibert's presence, the statement that the pipe was put on to heat the tallow?

Answer. No; I don't remember anything about it, what statement I did make to him.

Question. Did you use the cocks on the pipes, or generally keep them open?

Answer. Yes; I had to keep them open.

Question. Did you not state to M'r Garratt that with a long pipe the tallow congealed, and that you cut it off, or that in substance?

152 Answer. Yes; I think I told Garratt so, that the pipe was too long.

Question. How far was Watson's place from yours, and was he ever employed in your engine-room, and when?

Answer. About 250 or 300 feet. He was there one month instead of myself. That was in April, 1870, after these pipes were put on.

Question. If you had been using oil in the lubricator before you put the pipe on, would there have been any necessity for the pipe; and, if so, why so?

Answer. The lubricator would not work without the pipe. Without the pipe you could not get any condensation; that is the only reason.

Question. Would a larger lubricator work better on your engines than the one of the size you had?

Answer. I do not think it would make any difference, only it would hold more lubricant and work longer.

153 Question. Could you have regulated the condensation by the cocks on the pipe?

Answer. Yes.

Redirect:

Question. Did the Roscoe lubricator operate by condensing steam into water above the oil and then, because the water was heavier than the oil, the water would sink to the bottom of the oil and thereby raise the oil so that it would flow out through the pipe to the places where needed?

Answer. Well, it would not do it on our engines.

Question. Was that the plan of the lubricator, the method in which it was designed to work?

Answer. That was the design of the Roscoe oiler: the way I understood it.

Question. Why did the Roscoe oiler fail to work well on the engines at Black Point?

154 Answer. I could not tell why they did not work; I never knew they did work without a pipe.

Question. When, in your cross-examination, you said there was not condensation enough, please explain more fully what you meant.

Answer. I meant that it had not force enough to force the oil or tallow out of the lubricator.

Question. How close to the steam chest and steam-pipe were the Roscoe lubricators out there?

Answer. Well, they are connected to the steam-pipe. They were within 2 inches of the steam-pipe, and within from ten to fifteen inches of the steam-chest.

Question. When the engines were working, was that pipe always full of steam, and also the steam chest?

Answer. Yes.

Question. In order to keep full of steam, must they not keep over 212 degrees temperature?

155 (Objected to as leading.)

Answer. Yes; I should think they should of course.

Question. Would that or not always keep the tallow or oil in those Roscoe lubricators warm or hot, where they were situated?

Answer. Yes.

Question. In order to get more condensation in those lubricators which did you need, more heat or more cold?

Answer. I don't know as I do know.

Question. Do you understand the last question?

Answer. I did not understand it.

Question. If you have hot steam and want to condense it, do you do that by heating it or cooling it?

Answer. If you want to condense it you have to cool it.

Question. Then to get more condensation in the Roscoe oiler
156 would you not have to make them cooler instead of hotter?

Answer. That would be according to what I would have to work, if I had tallow or oil.

Question. What difference would the use of tallow or oil make when all you was after was more condensed water?

Answer. Well, the condensed water gets cold.

Recross:

Question. Were you using tallow or oil at the time the pipe was put on?

Answer. Was using tallow.

Question. Suppose that the tallow in the cup was not heated through sufficiently to keep it in a liquid state, what part of the tallow would be the more solid, the top or bottom?

Answer. I don't know as I could tell you which would.

Question. When in use was there not a column of hot steam or
157 hot water injected into the top portion of the tallow; I mean in the Roscoe cups?

Answer. No; I do not think you could call it injected. It came in there.

Direct:

Question. Who first spoke to you about putting those pipes on there?

Answer. Well, when the Roscoe oiler would not work, I told M'r Garratt to make me a pair of common oil globes, the same as we used to have, that those oilers would not work: then he said, "No; now put on the pipe," and I did put on the pipe, and then the thing was complete. It worked satisfactory with either oil or tallow.

Question. Did M'r Watson say anything to you about the pipes until they were on the lubricator?

Answer. I do not remember what he did say or when he said it.

Question. Do you remember whether M'r Garratt was the first
158 man who spoke to you about the pipes or not?

Answer. Yes; he was the first man.

JACOB SNYDER.

Subscribed and sworn to before me January 22d, 1875.

JOS. F. O'BEIRNE,
Examiner.

159 *Deposition of Cha's B. White.*

Circuit court of the United States, ninth judicial circuit, district of California.

NICHOLAS SIEBERT } *vs.* W. T. GARRATT. } No. 1199.

Be it remembered that on this 20th day of March, A. D. 1875, at my office

in the United States courts building in the city of San Francisco, personally appeared before me, Jos. F. O'Beirne, an examiner in chancery, duly appointed by the circuit court of the United States for the ninth judicial circuit in and for the district of California, CHARLES B. WHITE, a witness on behalf of the complainant in the above-entitled cause.

Cutler McAllister, esq., appeared as solicitor for the complainant, and M. A. Wheaton, esq., as solicitor for the defendant.

And the said witness, having been by me first cautioned and sworn to testify to the truth, the whole truth, and nothing but the truth, in the cause aforesaid, did thereupon depose and say as follows, that is to say:

Examination-in-chief by C. McAllister:

160 Question. What is your name, age, occupation, and place of residence?

Answer. My name is Charles B. White; my age is 47 years and upwards; my occupation is engineer, and my place of residence San Francisco. Have been engineer between 25 and 30 years. I knew the Roscoe lubricator; my first acquaintance with it must have been about 1867 or 1868. I saw one of those lubricators on the Spring Valley Water Works engine at Black Point about 1869. My object in going out there was to get an improved lubricator for engines; this was by direction of the owners of the National Flour Mill, for whom I was then working. I went out there and saw Mr Snyder, the engineer in charge of that place, and made known my object in coming out, which was to see the Roscoe lubricator. I came out more particularly to inquire the object of putting on the extra pipe, as that was claimed to be an improvement on the working of the cup. I asked Mr Snyder what the object of this

pipe was. He explained to me that the object of the pipe was to

161 heat the tallow and keep it in a liquid state so that it would feed.

I asked him if the pipe fulfilled the office for which it was put in, and he said it did not because the pipe filled with cold water and would not heat the tallow. That was the substance of the conversation I had with him.

Cross-examination:

Question. What was the reason that he did not take the pipe off if he put the pipe on there merely for the purpose of heating the tallow and failed to heat it, as you understood it?

Answer. There was no reason asked or assigned.

Question. Were the engines running while you were there?

Answer. They were.

Question. Was he using the Roscoe lubricators upon them at that time with the pipes attached?

Answer. Yes, sir.

162 Question. Were they not working well then every way?

Answer. No, sir, emphatically no; so much so that I refused to accept them.

Question. How could you tell they were not then working well?

Answer. I could tell from my experience as an engineer and what Snyder told me. The pipe lead some distance from the engine to the connection of the cup. I mean there was quite a distance from the connection with the cup to the point where the pipe took the steam. The engineer, Mr Snyder, the only way he could get over that was by disconnecting the pipe which he used for heating the tallow, blowing the water out of the pipe; he thought some of putting on a branch to blow the water out of the pipe, but it was not done while I was there.

Question. What was the length of the condensing-pipe at the time you saw it?

163 Answer. That I cannot say positively. It might have been 5 feet and may have been 10 feet. It is a long time since and I don't recollect particularly about it.

Question. From what point did those condensing-pipes take steam?

Answer. That I cannot say, whether from the steam-pipe or the boiler of the engine.

Question. What had you to do with accepting those lubricators or condensing-pipes?

Answer. I went for another firm to get an improved lubricator. I had nothing to do with those particular lubricators.

Question. Do you not know that those identical lubricators and condensing-pipes which you saw at the water-works in 1869 have been in continuous and entirely successful use there ever since, and are still so?

Answer. They were not in successful use then, and since then I know nothing about them.

Question. When you saw them in use what did you see in them

164 then that made that use unsuccessful?

Answer. Their not being successful even after the tallow was in a liquid state there was no depending on the feed. This answer is based upon what I saw and what Snyder told me. There was no dependence on the feed even when the tallow was in a liquid state.

Question. Did you see the feeding operation?

Answer. I did not.

Question. Did you see the tallow in a liquid state or not?

Answer. I did not.

Question. Did you see any of the operation of the lubricator at the time or was it entirely in metallic enclosures and out of sight?

Answer. I saw the operation of the lubricator the same that I would see a steam-engine in motion.

Question. What part of the operation of the lubricator was in sight?

165 Answer. The valve and pipes.

Question. Are the valve and pipes any part of the operation of the lubricator, or are they only the viaducts through which those operations are performed?

Answer. The valves are for the purpose of admitting the steam to the lubricator and the oil out; they pass each other through the valve and pipe.

Question. Please answer the last question.

Answer. There is no part of the operation of the lubricator in sight. All this is from hearsay, what I heard from Snyder. I did not see any of the results nor any of the operation.

CHARLES B. WHITE.

Subscribed and sworn to before me this 20 day of March, A. D. 1875.

JOS. F. O'BEIRNE, *Ex'r.*

166 *Deposition of A. Montgomery.*

Circuit court of the United States, ninth judicial circuit, district of California.

NICHOLAS SEIBERT } *vs.* } No. 1199.
W. T. GARRATT. }

Be it remembered that on this 20th day of March, A. D. 1875, at my

office in the United States courts building, in the city of San Francisco, personally appeared before me, Joseph F. O'Beirne, an examiner in chancery, duly appointed by the circuit court of the United States for the ninth judicial circuit, in and for the district of California, A. MONTGOMERY, a witness on behalf of the complainant in the above-entitled cause.

Cutler McAllister, esq., appeared as solicitor for the complainant, and M. A. Wheaton, esq., as solicitor for the defendant.

And the said witness having been by me first cautioned and sworn to testify to the truth, the whole truth, and nothing but the truth, in the cause aforesaid, did thereupon depose and say as follows, that is to say:

167 Examination-in-chief by Cutler McAllister:

Question. What is your name, age, occupation, and place of residence?

Answer. My name is A. Montgomery; my age is 43 years and upwards; my occupation is moulder by trade, and my place of residence San Francisco. I have been assistant engineer in the Spring Valley Water Works up to the present time, and am still there. I was assistant engineer at said works in 1869. There were Roscoe lubricators on the engines there at that time, such as the one now shown me.

(This cup offered in evidence by complainant, marked "Montgomery's Exhibit No. 1.")

In 1869 those cups were changed in the following manner: A hole was bored in the lower boss and a pipe was attached from that hole to the steam pipe. At first the pipe that was put on was 10 feet long. The lubricator worked a great deal better after this pipe was put on. The lubricator would not feed, and this pipe was attached. Before this pipe was put on the lubricator was attached to the engine by a pipe run-

168 ning through the upper boss. The lower boss-pipe was shortened afterwards about one half, I should say. There were two cocks on the lower boss-pipe, one where the pipe connected with the steam-pipe, and the other was close to where it connected with the lubricator. All these cocks were put on at one time. The only thing we regulated the flow of the lubricant was by the valve in the upper part of "Montgomery's Exhibit 1." They never attempted to regulate the supply of water under the lubricant. The only attempt to regulate either the introduction of steam or water into the cup or the supply of oil fed to the engine was by the valve in the top of Montgomery's Exhibit No. 1. The cocks and pipes were all kept wide open, except when we wished to clean out or fill up the lubricator.

Cross:

Question. Have those lubricators and condensing-pipes worked successfully ever since the pipes were put on?

Answer. Yes; but they worked better after the pipe was shortened.

169 A. MONTGOMERY.

Subscribed and sworn to before me March 20th, 1875.

JOS. F. O'BEIRNE, *Ex'r.*

170 *Certificate of examiner.*

UNITED STATES OF AMERICA,
District of California, ss:

I, Joseph F. O'Beirne, an examiner in chancery, duly appointed by

the circuit court of the United States for the district of California, do hereby certify that on the several days named in the depositions hereto annexed, I was attended at the city of San Francisco, district aforesaid, by the counsel and witnesses therein named. That each and all of said witnesses were duly sworn and examined, their depositions reduced to writing by me, and respectively read to the witnesses, and by them subscribed in my presence. I further certify that the exhibits referred to in the foregoing testimony were introduced in evidence in said cause during the taking of said depositions.

March 20th, 1875.

JOS. F. O'BEIRNE,
Examiner.

(Endorsed:) Filed March 23, 1875. L. S. B. Sawyer, clerk, by J. F. O'Beirne, deputy clerk.

171 *Stipulation that commission issue.*

In the circuit court of the United States for the ninth circuit, in and for the district of Califorina.

NICHOLAS SEIBERT, COMPLAINANT,
v.
W'M T. GARRATT, DEFENDANT.

It is hereby stipulated and agreed that a commission may issue in due form of law to I. I. Johnson, at the city of Washington, D. C., as a commissioner to take the deposition of William Burnett, a witness to be examined on behalf of defendant herein, and that said deposition shall be taken upon interrogatories and cross-interrogatories to be annexed thereto.

Dated San Francisco, Dec. 17, 1874.

McALLISTER & BERGIN,
Solicitors for Compl't.
M. A. WHEATON,
Solicitor for Resp'd't.

So ordered.
(Signed) LORENZO SAWYER,
U. S. Circuit Judge.

172 (Endorsed:) Filed Dec'r 22, 1874. L. S. B. Sawyer, clerk, by J. F. O'Beirne, dep. cl'k.

173 *Direct interrogatories.*

I. State your name, age, residence, and occupation.

II. Do you know the parties to this suit; and, if yea, how long have you known?

III. Have you ever resided in California? If yea, during what years and in what part of the State did you reside, and what was your occupation while there?

IV. Do you know when, if ever, the defendant, W. T. Garratt, first applied to a lubricator a condensing-pipe, by means of which he obtained the benefit of hydrostatic pressure in forcing the lubricant from the lubricator to the cylinders of steam-engines? If yea, please state fully all that you know in regard thereto, and attach to this deposition

any drawing that you may have of such lubricator and condensing-pipes, and fully explain the same.

V. Do you know or can you set forth any other matter or thing which may be a benefit or advantage to the parties at issue in this cause, or either of them, or that may be material to the subject of this your
174 examination or the matters in question in this cause? If yea, set forth the same fully and at large in your answer.

(Endorsed:) Filed Dec'r 22d, 1874. L. S. B. Sawyer, cl'k, by J. F. O'Beirne, deputy clerk.

175 *Cross interrogatories.*

In the circuit court of the United States for the district of California.

NICHOLAS SEIBERT, COMPLAINANT,
vs.
W'M T. GARRATT, RESPONDENT.

Cross-interrogatories to be administered to William Burnett, a witness to be examined on behalf of respondent.

First cross-interrogatory. If you state that you know of the application by respondent of a pipe as set forth in the fourth interrogatory, state particularly at what place and upon what engine you saw such pipe; the date at which you saw such pipe; to what, if any, lubricating cup such pipe was attached; the name of the engineer in charge of the engine or engines to which said cup was attached; who did
176 the manual labor in attaching such pipe to said cup; the length of such pipe when attached; whether such pipe was subsequently shortened; the material used as a lubricant in the cup to which such pipe was attached; if such pipe was shortened, the reason why it was shortened; whether there was a cock at the bottom of such pipe, or of the cup to which such pipe was attached; what was the object and purpose of placing such cock in that position; how long you saw such pipe and were examining the same, if at all; whether, at the time you saw such pipe, any alteration had been made in the cup, and whether at that time said cup was any other than or differed at all from the Roscoe cup; what was the defect or fault desired to be remedied by adding such pipe to the cup. Was that defect or fault remedied by the addition of such pipe, and how was it remedied?

Second cross-interrogatory. Did you appear as counsel for re-
177 spondent Garratt on the trial of the interference case of Garratt vs. Seibert, before the board of examiners-in-chief of the Patent Office, which case involved the matters in dispute in this cause?

Third cross-interrogatory. Were you examined as a witness for said Garratt in that interference case?

Fourth cross interrogatory. Did you not, while being so examined, or at any other time, and in presence of said examiners-in-chief, or any of them, and of A. H. Evans, counsellor at law, who then and there appeared as attorney for Seibert, state that the pipe you saw attached to a lubricator had been shortened from six to two feet, because it would heat the tallow better, or words to that effect?

Fifth cross-interrogatory. Have you written to respondent Garratt, or received any letter or letters from him, or any one on his behalf, as to your testifying in this case?

Sixth cross-interrogatory. Have you received from said Garratt, or from any one on his behalf, any diagram or representation of any lubricator; if so, have you received said diagram since your departure from the State of California?

178 Seventh cross-interrogatory. Have you received a copy of the interrogatories and cross-interrogatories administered to you upon this examination; if so, from whom did you receive the same?

Eighth cross-interrogatory. If you annex a diagram or drawing to your deposition, state whether said diagram was made before your examination; if so, how long before, and at whose request. State also if said diagram was made by yourself, or by whom; and if by yourself, whether the same was made from your memory or from data or memoranda; and if so, where you got such data or memoranda.

Ninth cross-interrogatory. How often have you testified in regard to the lubricators in controversy herein, and in whose behalf did you so testify?

(Endorsed:) Filed Dec'r 22, 1874. L. S. B. Sawyer, clerk, by J. F. O'Beirne, deputy clerk.

Commission.

179 The President of the United States of America to J. J. Johnson, greeting:

Know ye that we, in confidence of your prudence and fidelity, have appointed you commissioner, and by these presents do give you, said J. J. Johnson, full power and authority diligently to examine, upon his corporal oath or affirmation before you to be taken, and upon the interrogatories and cross-interrogatories hereunto annexed, William Burnett as a witness on the part of the defendant in a certain cause now pending undetermined in the circuit court of the United States of the ninth judicial circuit in and for the district of California, wherein Nicholas Seibert is complainant, and William T. Garratt is defendant.

And we do hereby require you, said J. J. Johnson, before whom such testimony may be taken, to reduce the same to writing, and to close it up under your hand and seal directed to Lorenzo S. B. Sawyer, clerk of the circuit court of the United States of the ninth judicial circuit in

180 and for the district of California, at the city of San Francisco, as soon as may be convenient after the execution of this commission; and that you return the same, when executed as above directed, with the title of the cause endorsed on the envelope of the commission.

Witness the honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States of America, this 22d day of January, in the year of our Lord one thousand eight hundred and seventy-five, and of our Independence the ninety-ninth.

[SEAL.] LORENZO S. B. SAWYER,
Clerk.

By J. F. O'BEIRNE,
Deputy Clerk.

181 *Stipulation that a commission issue.*

In the circuit court of the United State for the ninth circuit in and for the district of California.

NICHOLAS SEIBERT, COMPLAINANT,
vs.
WM. T. GARRATT, DEFENDANT.

It is hereby stipulated and agreed that a commission may issue in due form of law to J. J. Johnson, at the city of Washington, D. C., as a commissioner to take the deposition of William Burnett, a witness to be examined on behalf of defendant herein, and that said deposition shall be taken upon interrogatories and cross interrogatories to be annexed thereto.

Dated San Francisco, Dec. 17, 1874.

McALLISTERS AND BERGIN,
Solicitors for Compl't.
M. A. WHEATON,
Solicitor for Resp'd't.

So ordered.
(S'g'd) LORENZO SAWYER,
U. S. Circuit Judge.

182 (Endorsed:) Filed Dec'r 22d, 1874. L. S. B. Sawyer, clerk. By J. F. O'Beirne, deputy clerk.

UNITED STATES OF AMERICA:

Circuit court of the United States, ninth judicial circuit, district of California.

I, Lorenzo S. B. Sawyer, clerk of the circuit court of the United States of the ninth judicial circuit in and for the district of California, do hereby certify the annexed to be a copy of the original stipulation and order, that a commission issue in the above-entitled suit to J. J. Johnson to take the deposition of William Burnett, now on file and remaining of record in my office; that I have compared the same with said original, and that the same is a correct transcript therefrom, and of the whole of said original.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at San Francisco, this 22d day of January, A. D. 1875.

[SEAL.] L. S. B. SAWYER, *Clerk.*
By J. F. O'BEIRNE, *Deputy Clerk.*

183 *Direct interrogatories to be propounded to William Burnett.*

I. State your name, age, residence, and occupation.

II. Do you know the parties to this suit, and, if yea, how long have you known them?

III. Have you ever resided in California? If yea, during what years and in what part of the State did you reside and what was your occupation while there?

IV. Do you know when, if ever, the defendant W. T. Garratt first applied to a lubricator a condensing pipe by means of which he obtained the benefit of hydrostatic pressure in forcing the lubricant from the lu-

bricator to the cylinders of steam-engines? If yea, please state fully all that you know in regard thereto, and attach to this deposition any drawing that you may have of such lubricator and condensing pipes, and fully explain the same.

V. Do you know or can you set forth any other matter or thing which may be a benefit or advantage to the parties at issue in this cause or either of them, or that may be material to the subject of this your
184 examination or the matters in question in this cause? If yea, set forth the same fully and at large in your answer.

(Endorsed:) Filed Dec'r 22d, 1874. L. S. B. Sawyer, clerk. By J. F. O'Beirne, deputy clerk.

UNITED STATES OF AMERICA:

Circuit court of the United States, ninth judicial circuit, district of California.

I, Lorenzo S. B. Sawyer, clerk of the circuit court of the United States of the ninth judicial circuit in and for the district of California, do hereby certify the annexed to be a copy of the original direct interrogatories to be propounded to William Burnett, witness for the defendant in the above-entitled suit, now on file and remaining of record in my office; that I have compared the same with said original, and that the same is a correct transcript therefrom, and of the whole of said original.
185 In testimony whereof I have hereunto set my hand and affixed the seal of said court, at San Francisco, this 22d day of January, A. D. 1875.

L. S. B. SAWYER, *Clerk*,
By J. F. O'BEIRNE,
Deputy Clerk.

186 *Cross-interrogatories to be propounded to William Burnett.*

In the circuit court of the United States for the district of California.

NICHOLAS SEIBERT, COMPLAINANT,
vs.
W'M T. GARRATT, RESPONDENT.

Cross-interrogatories to be administered to William Burnett, a witness to be examined on behalf of respondent.

First cross-interrogatory. If you state that you know of the application, by respondent, of a pipe, as set forth in the fourth interrogatory, state particularly at what place and upon what engine you saw such pipe; the date at which you saw such pipe; to what, if any, lubricating cup such pipe was attached; the name of the engineer in charge of the engine or engines to which said cup was attached; who did the manual labor in attaching such pipe to said cup; the length of such pipe when attached; whether such pipe was subsequently short-
187 ened; the material used as a lubricant in the cup to which such pipe was attached; if such pipe was shortened, the reason why it was shortened; whether there was a cock at the bottom of such pipe, or of the cup to which such pipe was attached; what was the object and purpose of placing such cock in that position; how long you saw such pipe and were examining the same, if at all; whether, at the time

you saw such pipe, any alteration had been made in the cup, and whether at that time said cup was any other than, or differed at all from, the Roscoe cup; what was the defect or fault desired to be remedied by adding such pipe to the cup; was that defect or fault remedied by the addition of such pipe, and how was it remedied?

Second cross-interrogatory. Did you appear as counsel for respondent Garratt on the trial of the interference case of Garratt vs. Seibert, before the board of examiners-in-chief of the Patent Office, which case involved the matters in dispute in this cause?

Third cross-interrogatory. Were you examined as a witness for said Garratt in that interference case?

188 Fourth cross-interrogatory. Did you not while being so examined, or at any other time, and in presence of said examiners-in-chief or any of them, and of A. H. Evans, counsellor at law, who then and there appeared as attorney for Seibert, state that the pipe you saw attached to a lubricator had been shortened from six to two feet, because it would heat the tallow better, or words to that effect?

Fifth cross interrogatory. Have you written to respondent Garratt, or received any letter or letters from him, or any one on his behalf, as to your testifying in this case?

Sixth cross-interrogatory. Have you received from said Garratt, or from any one on his behalf, any diagram or representation of any lubricator; if so, have you received said diagram since your departure from the State of California?

Seventh cross-interrogatory. Have you received a copy of the interrogatories and cross-interrogatories administered to you upon this examination; if so, from whom did you receive the same?

Eighth cross-interrogatory. If you annex a diagram or drawing
189 to your deposition, state whether said diagram was made before your examination; if so, how long before, and at whose request? State, also, if said diagram was made by yourself, or by whom; and, if by yourself, whether the same was made from your memory, or from data or memoranda, and, if so, where you got such data or memoranda.

Ninth cross-interrogatory. How often have you testified in regard to the lubricators in controversy herein, and in whose behalf did you so testify?

(Endorsed:) Filed Dec'r 22d, 1874. L. S. B. Sawyer, clerk, by J. F. O'Beirne, deputy clerk.

UNITED STATES OF AMERICA:

Circuit court of the United States, ninth judicial circuit, district of California.

I, Lorenzo S. B. Sawyer, clerk of the circuit court of the
190 United States, of the ninth judicial circuit, in and for the district of California, do hereby certify the annexed to be a copy of the original cross-interrogatories to be propounded to William Burnett, a witness for the defendant in the above entitled suit, now on file and remaining of record in my office; that I have compared the same with said original, and that the same is a correct transcript therefrom, and of the whole of said original.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at San Francisco, this 22d day of January, A. D. 1875.

[SEAL.]

L. S. B. SAWYER, *Clerk.*
By J. F. O'BEIRNE, *Deputy Clerk.*

191 *Deposition of W. Burnett.*

1. In answer to the first interrogatory the witness saith: My name is William Burnett; age, forty-nine; residence, Washington, District of Columbia; my occupation, supervising inspector-general United States steamboat-inspection service; my profession, mechanical engineer.

2. In answer to the second interrogatory the witness saith: I know the parties to this suit, and became acquainted with both, I think, in 1862 or 1863.

3. In answer to the third interrogatory the witness saith: My residence was in San Francisco, California, from May, 1862, to February, 1873, and my occupation was, from 1862 to 1870, United States supervising inspector of steamboats for the Pacific coast; my occupation from 1870 to 1873, consulting superintending engineer.

4. In answer to the fourth interrogatory the witness saith: I have no personal knowledge of the exact time when the defendant first applied condensing-pipes to lubricators, or to the lubricator on the engines of the San Francisco Water Works, of which lubricator, with con-
192 densing-pipe attached, I was afterwards called upon to make a drawing for the defendant. I think it was early in 1871 the defendant engaged me to make for him the drawing referred to, and went with me to the water-works to introduce me to the persons in charge, that no objection might be made to my proceeding with my work. While at the water-works the defendant introduced me to the engineer in charge (M'r Jacob Snyder). In answer to a question as to the satisfactory working of the instrument, I was told by M'r Snyder that it was the most perfect lubricator within his knowledge. He farther informed me that when the lubricator was first put on these engines it was not supplied with a condensing pipe, and he had great difficulty in making it feed with regularity, and that he so informed the defendant, who had furnished it; that the defendant thereupon promised to give the matter his attention, and finally gave him directions for putting on the condensing-pipe, at the same time explaining his purpose of thereby compelling the instrument to feed by introducing under the lubricant the pressure of the column of water which would necessarily accu-
193 mulate from condensation in the vertical pipe to be erected; that when under the defendant's direction the pipe was first erected it was made much longer than it now appeared, with the view of obtaining the weight of a superior column of water, but upon trial it was found that the water of condensation had lost its temperature to such a degree by radiation, by the time it reached the oil-chamber, that the melted tallow used as a lubricant appeared to be chilled by it; that this effort was, therefore, not fully successful, while for the use of a lubricant fluid at common temperature (as oil), the condensing pipe was as perfect when first erected as after the said pipe was shortened; that by direction of the defendant the condensing-pipe was shortened to about two feet in length, to prevent so great a loss of heat by radiation, while a proper length of pipe was still retained to provide a sufficient head of water to expel the lubricant from the oil-chamber into the engine. I gathered the foregoing information from conversation with M'r Jacob Snyder at the time I was employed in taking measurements from which to make the drawing of the lubricator and condensing-pipe above referred to, which drawing was produced in court on the first trial,
194 Seibert vs. Garratt, in the United States court at San Francisco, Judge Sawyer, presiding. The instrument to which this condensing-pipe was attached at the San Francisco Water Works is known

as "Roscoe's patent oil-feeder." I was also informed by Jacob Snyder on the occasion of my visit to the water-works as above that the condensing-pipe had been on these engines since November, 1869.

5. In answer to the fifth interrogatory the witness saith: In the winter of 1868, as nearly as I can now fix the time, but certainly prior to November, 1869, the defendant himself explained to me, in connection with a Roscoe oil-feeder as an improvement contemplated by him in its application to locomotive engines, the introduction of water under the oil by means of an independent pipe to effect its expulsion into the engine, the introduction of said water being controlled by a suitable valve.

Cross-examination:

1. In answer to the first cross-interrogatory, the witness saith:
195 I saw the condensing-pipe referred to on the engine of the water-works in San Francisco, California. I think it was early in the year 1871 I first saw the said pipe. The pipe was attached to a Roscoe oil-feeder. The name of the engineer was Jacob Snyder. Who did the manual labor on attaching said pipe I do not know. The length of the pipe when first attached was five or six feet, as informed by the engineer, Mr Snyder. When I saw the pipe it was just about two (2) feet long. Was informed that melted tallow was used as a lubricant. The reason why the pipe was shortened, as informed by the engineer, is fully explained in my answer to the fourth direct interrogatory. There was no cock at the bottom of the pipe, but there was a screw-valve, which could be used either to close the communication with the oil-chamber, or to regulate the influx of water from the condensing-pipe into said chamber. There was a plug-cock at the top of the pipe to close the communication between the condensing-pipe and the main steam-pipe of the engine when desired. The purpose of placing a screw-valve at the bottom of the pipe is indicated by the uses it may subserve, as above stated, viz, to close the communication or to regulate the
196 influx of water; that it was probably intended for both these purposes is indicated by the fact that while a cock is used at the top of the pipe, where a means of shutting off is only required, a screw-valve is used at the bottom of the pipe, affording a better means of regulating the size of opening than is possible with the use of a plug-cock. I saw the pipe at the time I was engaged in making sketches and taking dimensions of the lubricator with the pipe attached, and at other times subsequently. No alteration had been otherwise made in the cup beyond the attachment of the condensing-pipe, so far as I know; it was substantially the "Roscoe" cup so far as its form and previous connections are concerned.

In giving an opinion as to what was the defect or fault to be remedied by adding the condensing-pipe, whether that defect or fault was remedied by the addition of said pipe, and how it was remedied, I will first describe the construction of a Roscoe oil-feeder, and its operation when oil is employed as a lubricant. It consists of a vertical cylindrical chamber, having a screw-plug at the top, by removing which the oil is introduced into the chamber until it is nearly filled. The said
197 chamber is also provided with a cock at the bottom for discharging its contents when desired.

The Roscoe oil-feeder has only one pipe connected therewith, and this pipe serves the double purpose of conveying steam into the oil-chamber and discharging the oil therefrom into the engine. This pipe is inserted in the side and near the top of the oil-chamber, and from this point the pipe is inclined downward to facilitate the discharge of the oil, the opposite end thereof being inserted in the engine, steam-pipe, valve-

chest, or other steam space into which it is desired to convey the lubricant. This pipe is provided with a regulating valve. It will be understood that, the oil-chamber being filled to a point no higher than the pipe by which the steam is introduced, there still remains a space above the oil into which the steam enters, and, being condensed therein, the water of condensation sinks through the oil to the bottom of the chamber, raising the oil so that it flows down the said pipe into the engine.

The foregoing is substantially a description of this lubricator as arranged on the engine at the San Francisco Water Works before the addition of the condensing-pipe; but instead of oil melted tallow was
198 employed, and with this lubricant the working of the instrument was found to be defective and unreliable. From a consideration of the working of this lubricator before and after the addition of the condensing-pipe, I am satisfied that the melted tallow introduced into the chamber did not uniformly remain sufficiently fluid to permit the water of condensation deposited upon its surface to sink through it, and so the greater portion of the tallow remained in the chamber, while the accumulating water of condensation was conveyed away by the pipe through which the steam was admitted.

This was the difficulty to be remedied; and in an effort to overcome this difficulty the condensing-pipe, five or six feet in length, was erected. The great length of pipe employed at once suggests that the primary purpose of its attachment must have been to obtain a sufficient hydrostatic force to secure certainty and uniformity of action. The lower end of said pipe was inserted in the side and near the bottom of the oil-chamber, while the upper end was inserted in the steam pipe of the engine.

This new pipe became the induction pipe of the instrument,
199 while the pipe belonging to the Roscoe arrangement was now used solely as an eduction-pipe to convey the lubricant to the engine.

These two pipes were so arranged and attached that the hydrostatic pressure of the water in the condensing-pipe was the only force operating to expel the lubricant from the chamber of the instrument, the operating steam-pressure in both pipes being equal. The attachment of this long condensing-pipe, to operate as described, would have been completely effective with oil as a lubricant; but with tallow there was still a difficulty to be overcome. The proximity of the oil-chamber to the steam-pipe of the engine preserved the tallow in a sufficiently fluid state to be raised by the introduction under it of water, which would not have the effect of chilling it; but the condensing-pipe, as attached, occupying a comparatively isolated position, the water contained therein became so cool as to chill the tallow with which it came in contact—not in the chamber itself, but in the lower end of the condensing-pipe, between the chamber and the regulating-valve, that part of the pipe being thereby plugged with tallow more or less congealed by contact with the water, sufficient at times to resist the force of the water column
200 in the vertical part of the pipe. The success attending the shortening of the pipe almost demonstrates this to have been a fact, as this being the only alteration made, and the water from later condensation being of a somewhat higher temperature, all difficulty was at once removed.

2. In answer to the second cross-interrogatory, the witness saith: I did appear as assistant counsel for respondent, Garratt, at the trial of interference referred to, before the board of examiners-in-chief of the Patent Office.

3. In answer to the third cross-interrogatory, the witness saith: I was examined as a witness for respondent, Garratt, in the interference case referred to.

4. In answer to the fourth cross-interrogatory, the witness saith: I cannot remember at a period so remote exactly what words I may have employed on either occasion; but never having been told that the pipe was shortened with the view of heating the tallow better, and never having entertained this idea myself, I could not have used the words specified,
201 nor any words to that effect. It would hardly be possible to heat the tallow in this way, yet water sufficiently warm to prevent chilling the tallow may be obtained by shortening the water column so as to secure water of later condensation. This I know experimentally; and in my argument before the examiner-in-chief I may have presented this view, or I may have done so in my evidence.

5. In answer to the fifth cross-interrogatory, the witness saith: I received some time since a letter from M'r Garratt requesting me to send him the name of some United States commissioner in Washington, as he wished to have my testimony in the case. I sent the name of J. J. Johnson, esq. A few weeks ago M'r Garratt also telegraphed to me, asking me if my testimony had been taken. I answered (after calling on M'r Johnson) that the commission had not yet been received. This is the extent of our communication on this subject.

6. In answer to the sixth cross-interrogatory, the witness saith: I have received no diagram or representation of any lubricator from M'r Garratt, or from any one in his behalf.

202 7. In answer to the seventh cross-interrogatory, the witness saith: I have not received a copy of the interrogatories or cross-interrogatories administered to me upon the examination from any one.

9. In answer to the ninth cross-interrogatory, the witness saith: This is the third time I have testified in regard to the lubricators in this controversy, and in each case have been called upon to do so by the respondent, Garratt.

WM BURNETT.

Sworn and subscribed to before me this 20th day of February, A. D. 1875.

[SEAL.] JOHN J. JOHNSON,
Commissioner.

Costs, $25 00. Not paid.

J. J. JOHNSON,
Commissioner.

(Endorsed:) Deposition W'm Burnett, witness for def't. Opened by stip. of counsel, and refiled 10 March, 1875.

L. S. B. SAWYER, *Clerk.*

203 *Order granting appeal.*

At a stated term of the circuit court of the United States of America of the ninth judicial circuit, in and for the district of California, held at the court-room, in the city of San Francisco, on Thursday, the second day of September, in the year of our Lord one thousand eight hundred and seventy-five.

Present, honorable Lorenzo Sawyer, judge.

N. SEIBERT
vs.
W. P. GARRATT.

At this day, on motion of M. A. Wheaton, esq., solicitor for defend-

ant, it is ordered that an appeal from the decision rendered and decree ordered in the above entitled cause on the 23d day of August, A. D. 1875, of the July term, A. D. 1875, to the Supreme Court of the United States, be, and the same is hereby allowed, and that a certified copy of the pleadings, depositions, evidence, stipulations and proceed-
204 ings be forthwith transmitted to the Supreme Court of the United States, upon the appellant giving a bond in the sum of five hundred dollars.

205 *Bond on appeal.*

In the Supreme Court of the United States.

WILLIAM T. GARRATT, APPELLANT,
vs.
NICHOLAS SEIBERT, APPELLEE.

Know all men by these presents, that we, William T. Garratt, as principal, and Henry J. Holmes, and Samuel Dinsmore, as sureties, are held and firmly bound unto Nicholas Seibert, in the sum of five hundred ($500) dollars, to be paid to the said Nicholas Seibert, his heirs, executors or administrators, to which payment well and truly to be made we bind ourselves, and each of us, jointly and severally, and our, and each of our heirs, executors, and administrators firmly by these presents, sealed with our seals, dated this second day of September, A. D. 1875.

Whereas, the above named William T. Garratt has prosecuted
206 an appeal to the Supreme Court of the United States of America, to reverse the decree rendered in the suit in the circuit court of the United States for the district of California, entitled "Nicholas Seibert versus W. T. Garratt":

Now therefore, the condition of this obligation is such, that if the above-named William T. Garratt shall prosecute his said appeal to effect and answer all costs if he shall fail to make good his plea, then this obligation shall be void, otherwise to remain in full force and virtue.

W. T. GARRATT. [SEAL.]
H. J. HOLMES. [SEAL.]
SAM'L DINSMORE. [SEAL.]

Signed, sealed and delivered in presence of
JOS. F. O'BEIRNE.

UNITED STATES OF AMERICA,
District of California, ss:

Henry J. Holmes and Samuel Dinsmore, being duly sworn, each for himself, deposes and says, that he is a householder in said district, and is worth the sum of five hundred dollars, exclusive of property exempt from execution, and over and above all his just debts and li-
207 abilities.

H. J. HOLMES.
SAM'L DINSMORE.

Subscribed and sworn to before me this 2d day of September, A. D 1875.

JOS. F. O'BEIRNE,
Comm'r U. S. Circuit Court Cal. Dist.

(Endorsed:)

I approve both the form of the within bond, and the sufficiency of the sureties thereon.

(Signed) LORENZO SAWYER,
U. S. Circuit Judge.

Filed Sept. 2d, 1875.

L. S. B. SAWYER, *Clerk.*
By J. F. O'BEIRNE, *Deputy Clerk.*

208 UNITED STATES OF AMERICA,
District of California, ss:

I, Lorenzo S. B. Sawyer, clerk of the circuit court of the United States for the district of California, in the ninth judicial circuit, do hereby certify that the foregoing and hereunto annexed two hundred and seven written pages, numbered from 1 to 207, both inclusive, contain a full, true, and correct transcript of all the proceedings in the cause therein entitled on appeal from said circuit court to the Supreme Court of the United States.

Witness my hand, and the seal of said circuit court, this 23d day of October, A. D. 1875.

[SEAL] L. S. B. SAWYER, *Clerk.*
By J. F. O'BEIRNE, *Dep. Clk.*

209 UNITED STATES OF AMERICA, *ss:*

To Nicholas Seibert, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States of America, to be held at the city of Washington, in the District of Columbia, on the 25th day of October, A. D. 1875, pursuant to an order granting an appeal to the Supreme Court of the United States, made by the circuit court of the United States, for the district of California, on the second day of September, A. D. 1875, wherein William T. Garratt is appellant, and you the said Nicholas Seibert are defendant in error, to show cause if any there be, why the decree in the said order mentioned, should not be corrected, and speedy justice should not be done to the parties in that behalf.

Witness the Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, this 8th day of October, A. D. 1875, and of the independence of the United States, the 100.

[SEAL.] LORENZO SAWYER,
U. S. Circuit Judge, Ninth Circuit.

(Indorsed:) 1199. United States Supreme Court. William T. Garratt, appellant, vs. Nicholas Seibert, appellee. Original citation.

Service of the within citation, and receipt of a copy thereof, admitted this 8th day of October, A. D. 1875.

McALLISTERS & BERGIN,
Attys for Appellee.

Filed Oct. 9, 1875.

L. S. B. SAWYER,
Clk.
By J. F. O'BEIRNE,
Dep. Clk.

(Indorsement on cover:) No. 344. William T. Garratt, appellant, vs. Nicholas Seibert. California C. C. U. S. Filed 15th January, 1876.

Supreme Court

OF THE UNITED STATES.

OCTOBER TERM, 1878. No. 81.

WILLIAM T. GARRATT,

Appellant,

vs.

NICHOLAS SEIBERT.

Brief for Appellant.

M. A. WHEATON,

For Appellant.

New York:

JOHN POLHEMUS, PRINTER, 102 NASSAU STREET.

Supreme Court of the U. S.

No. 81.

WILLIAM T. GARRATT,
Appellant,

vs.

NICHOLAS SEIBERT.

Appeal from the United States Circuit Court, Ninth Circuit, District of California.

APPELLANT'S BRIEF.

Statement of the Case.

This is a suit in Equity. The bill of complaint was filed by Nicholas Seibert, as complainant, against William T. Garratt, the appellant, to have adjudged void and set aside certain United States Letters Patent for an improvement in lubricators. The suit was brought upon the alleged ground that the patent granted to Garratt interfered with another patent granted to the complainant Seibert for other improvements in lubricators. The bill of complaint was filed November 6th, 1873. A subpœna was duly issued and served, and the defendant Garratt duly appeared and filed his answer, April 22d, 1874. The complainant filed his replication March 23, 1875. Testimony was taken upon both sides, and a final decree was entered against the defendant Garratt on the 30th day of September, 1875.

An order granting an appeal to this Court was

duly made and entered, and a bond on appeal was duly filed, and a citation was duly served. The lubricators on which the improvements were patented were of a kind used for feeding the lubricant into the inside of steam engine cylinders while the pistons are working therein.

Briefly stated and omitting formal parts of the allegations, the bill of complaint alleges (pages 1, 2 and 3 of the printed record) that the complainant was the original and first inventor of a new and useful improvement in lubricators, for which improvement he obtained a U. S. Patent on the 14th day of February, 1871, bearing date on said day, and being numbered 111881, and running for a term of seventeen years.

That a copy of said patent is marked Exhibit A, and annexed to and made a part of said bill. The bill refers to its Exhibit A for a description of the alleged invention. (Said Exhibit A is on pages 4 and 5 of the printed record; its drawings are pasted in the printed record, and not paged.)

The bill further alleges that on November 19th, 1872, U. S. Letters Patent, numbered 133217, were issued to the defendant, William T. Garratt, purporting to secure to him, for seventeen years from said last-named date, an improvement in lubricators. That said patent to Garratt was reissued to him March 18th, 1873, the reissued patent being numbered 5328, and a copy of it marked Exhibit B being annexed to and made a part of said bill of complaint. (Exhibit B is on pages 6, 7 and 8 of the printed record; its drawings are pasted in the record, and are not paged.)

The bill alleges that the said invention patented to Garratt by said reissued patent is substantially the same invention made by Seibert in May, 1870, and secured to him by the said Letters Patent, Exhibit A, and that the Letters Patent, Exhibit B, are a direct interference with the Letters Patent, Exhibit A.

The bill further alleges that Garratt claims to have invented the improvement patented to him, because he claims that in the latter part of the year 1869 he constructed one single half-inch steam pipe, which he, defendant, claims to have applied to the Roscoe lubricator upon an engine of the Spring Valley Water Works, at Black Point, in San Francisco. That if said steam pipe was constructed and applied by Garratt to said Roscoe lubricator, as claimed by him, said steam pipe was not and was not intended by defendant to act as a condenser, but merely as a pipe to convey steam from the steam pipe to the Roscoe lubricator for the sole purpose of melting and keeping liquid the tallow in said Roscoe lubricator, which tallow was then and there exclusively used by said Spring Valley Water Works as the lubricant for said Roscoe lubricator. That it was not until after Garratt had learned of and seen complainant's invention of the improvement patented by the original of Exhibit A, that he, Garratt, ever alleged or pretended that said steam pipe, claimed to have been constructed and applied by him in 1869 to an engine of said Spring Valley Water Works, did operate, or was intended to operate, as a condenser, or in any other way than as medium to convey steam to the Roscoe lubricator for the sole purpose of melting the tallow therein.

The bill further alleges that whatever rights Garratt acquired by the construction and application of said steam pipe to said Roscoe lubricator, were entirely lost by the delay and laches of Garratt in *obtaining* a patent therefor; that the said original and reissued Letters Patent were granted to Garratt improvidently, in disregard of Seibert's prior rights and in violation of law, and that by the improvident and illegal issue of said interfering reissued Letters Patent to Garratt, the complainant will sustain great and irreparable loss and injury.

Then follows a prayer in the bill that said reissued Letters Patent be adjudged null and void and for general relief.

The answer of the defendant Garratt is on page 9 of the printed record. He admits the granting of the patents as alleged in the bill, but denies that the invention patented to him by the patent Exhibit B was ever invented in whole or in part by the complainant Seibert, and denies that said invention, or any part of it, was secured to the complainant by the patent Exhibit A.

The answer further alleges that in 1872 an interference was regularly declared by the Commissioner of Patents between the complainant and defendant, in order to try the question of priority, and decide whether Garratt or Seibert was the first inventor of the invention described in Exhibit B, and that thereupon testimony was taken and all the facts bearing upon the issue were proved, and the Commissioner decided that Garratt was the first inventor, and thereupon granted the original patent to him, which was afterwards reissued, as shown by Exhibit B.

That in the Fall of 1869 he, Garratt, caused two of said inventions to be placed upon engines of the Water Company at Black Point, in San Francisco, which inventions have ever since there remained in public and successful operation upon said engines. He denies that either of said inventions were placed upon said engines merely as a pipe to convey steam from the steam pipe to the Roscoe lubricator, but, on the contrary, avers that the same were placed there to act as condensing pipes in all respects as described in said Exhibit B, and that the same did so act and operate, and were intended to so act and operate, by defendant, and it was for such purpose that he caused them to be placed there, and he denies that he first made such claim at any subsequent date. He denies that either the original or reissued patent was issued to him improvidently, and denies that complainant will sustain any loss or injury on account of any improvident or illegal issue of said Exhibit B.

The questions involved in this appeal are—

1. Are the originals of Exhibits A and B interfering patents.

2. If so, was Garratt the original and first inventor of the invention covered by Exhibit B.

The appellant assigns as errors, which he will rely upon on this appeal, the following:

1. The Court erred in holding and deciding that Reissued Letters Patent No. 5328, of which Exhibit B is a copy, is or was an interfering patent with Patent No. 111881, of which Exhibit A is a copy.

2. The Court erred in holding and deciding that the appellant William T. Garratt was not the original and first inventor of the improvement described and claimed in said Reissued Letters Patent.

The decree entered in this case is wrong in adjudging that the appellant William T. Garratt was not the first inventor of the improvement, or discovery claimed by him in the Reissued Letters Patent, No. 5328, granted to him March 18th, 1873.

The decree is also wrong in adjudging that said Garratt was not the orginal inventor of said improvement or discovery.

The decree is also wrong in adjudging said Reissued Letters Patent void, and also in vacating and setting the same aside, and also in decreeing costs against the defendant Garratt.

ARGUMENTS.

The following facts are proved and not disputed, viz.: That in 1869 the defendant Garratt was a brass founder in San Francisco, and was agent for a steam engine lubricator called the Roscoe lubricator. That the Roscoe lubricator consisted of a reservoir for holding the lubricant and a pipe, one end of which connected with the upper part of the reser-

voir and the other end of which connected with the steam chest of the engine to be lubricated, so as to make an open connection between the inside of such steam chest and the inside of the lubricator or reservoir towards its upper end. There were also openings, which could be closed steam tight in the lubricator, for filling the lubricant into it and for letting water out of it. In use, the lubricator was placed above the steam chest of the engine, and the pipe connecting the inside of the steam chest with the inside of the upper part of the lubricator was left open, so as to permit a free communication between those places for the steam and lubricant to pass. All other openings of the lubricator must be closed steam tight since the pressure of the steam on the inside of the lubricator was the same as the pressure of the steam in the engine. The operation was as follows, viz.: The reservoir of the lubricator must, before starting it to work, be filled with lubricant up to the outlet through the said pipe to the steam chest. This would be all the lubricant the reservoir would hold, because if any more was poured into it, it would immediately flow out through the pipe to the steam chest. When the engine started, steam would instantly pass up through the said pipe into the upper part of the reservoir, and fill all the vacant space there was above the lubricant. The steam being lighter than the lubricant, would remain above it so long as it remained steam; but, water being heavier than the lubricant, as fast as the steam above the lubricant condensed into water, the water sank down through the lubricant to the bottom of the reservoir, and, in so doing, the volume of water displaced an equal volume of the lubricant, thus causing it to rise in the reservoir and flow off through the said pipe to the steam chest and engine where it did its work of lubricating.

Neither Seibert nor Garratt invented the Roscoe lubricator. That was much older than either of their inventions.

Late in the Fall of 1869, Garratt being agent for the Roscoe lubricator, put one of them upon each of two engines belonging to the water works at Black Point in San Francisco. An engineer named Jacob Snyder was running the engines. After Garratt put the Roscoe lubricators on the engines, they, the lubricators, did not work to the engineer's satisfaction, as they did not feed the lubricant fast enough to the engines to keep them well lubricated. Snyder complained to Garratt about them and wanted Garratt to take them off and put on the old Globe lubricators, but Garratt said he could make the Roscoe lubricators work, and he did not want to take them off. Garratt went and examined the lubricators and made a sketch on the floor showing a condensing pipe with regulating cocks which he would have attached, and explained it to Snyder, and Snyder said he thought it would work. Garratt had Snyder send one of the lubricators at once to the foundry, and Garratt fixed it for receiving the condensing pipe. He instructed Snyder how to put on the condensing pipe six feet long, with a regulating cock, and told him he could drive all the oil out in one minute or he could be a week about it. The pipes were put on and were found too long and were then shortened, and from that time (late in the Fall of 1859) to the present those identical Roscoe lubricators and condensing pipes have been in successful use on those identical engines, and without any further changes.

I have thus explained what the evidence shows about the Roscoe lubricator for the purpose of showing the state of the art when Garratt and Seibert claim to have made their respective inventions.

Seibert himself himself swears that he did not invent the improvements shown in his patent Exhibit A until May, 1870, some six months after Garratt had his in finished and successful operation on the two engines at Black Point. There is no dispute about these dates.

Watson was Seibert's principal witness and pretends that he advised Snyder to put on the *pipe in order to get more heat*, and the theory of complainant is, that because Watson gave this advice, if he ever did give it, that Garratt must also have supposed more heat was wanted, and that therefore (although the pipes were put on *as he*, Garratt, *directed* and *by his direction*, and without his knowing anything about Watson or his advice, but acting entirely upon his own original conceptions and none other) he never invented the condensing pipe for such but invented it for a heating pipe, and therefore the patent to him is void. So far as I can understand this was the ground of the decision of the Court below.

Returning now to the patents, we find Exhibit B is not a patent for the same invention patented in Exhibit A.

Seibert's patent has been before this Court and received a construction from it once before. It was here on a writ of error in which Garratt was the plaintiff in error and Seibert the defendant. Seibert's patent has two claims only. His first claim is for a heating device which he has practically thrown away, as it is never needed. He makes his lubricators without it. It is singular that Seibert, the complainant, and Watson, his principal witness, should both, independently of each other, have formed the belief that a heating apparatus was an improvement in the Roscoe style of lubricators that eject oil by condensed water. Both Watson and Seibert were engineers, and Watson, if he has told the truth, then advised Snyder to apply more heat, when too much heat already existed, and Seibert actually invented a heating apparatus, which constitutes the first claim in his patent, but which he has had to throw away and leave out of his lubricators, as a damage and detriment to them. Measuring Garratt's ability by their want of it, they cling to a pretended belief that he too must have thought more heat was necessary, although

he never did think so, never said so, and never acted so, because he never tried to invent or apply any device for furnishing that kind of lubricators with more heat; but on the contrary, did invent and apply a device of just the opposite kind. Yet, Watson and Seibert, lacking the honesty to admit, or understanding to comprehend what several years of *actual use and experience* have demonstrated to be the fact, viz., that more condensation, and consequently a lower temperature, was needed, still keep repeating their worn-out refrain, that heat was wanted to melt tallow. Take Watson's testimony through, and is there any doubt but that he knows one thing, but is trying to make the Court believe another. His refusal to give direct answers to questions on the cross-examination; his swearing the pipes are *melting* pipes, when he knows to the contrary; the efforts he makes to get rid of saying what he well knew—that the pipes at the Water Works did condense water, and that water made the lubricators do their work better; his willing explanations that the same kind of pipes in Seibert's lubricator were condensing pipes; that they were an advantage because of their cooling tendency in furnishing condensed water and keeping the steam from cooking the lubricant; and evidently knowing, but refusing to acknowledge that Garrett's pipes at the Water Works done the same thing; advising Snyder, as he himself says, to put on for heating pipes the very pipes which he so freely explains are cooling pipes in Siebert's machines; all this proves Watson's insincerity, and his evidence should have no weight in the case, either as to his opinions as an expert, or his statement or pretended statement of facts.

The first claim of Seibert's patent is out of this case, as Garratt's patent does not cover any heating apparatus, and does not, of course, prevent Seibert from claiming, making, using and selling his heating apparatus.

The second and last claim in Seibert's patent is for

"The improved lubricator, consisting of the parts herein described, constructed and arranged substantially as specified."

This claim is for an "improved lubricator." It is not for any of the parts of the lubricator by themselves. It cannot possibly cover any less number of the parts than what will suffice to make a full working lubricator. The lubricator covered by this claim was decided by the Circuit Court in a former suit to be "for an arrangement or combination of parts *constituting a lubricator*, and that the lubricator itself was necessarily composed of only the condensing pipe A, the Reservoir D, the oil pipe E, the oil reservoir F, the stop cock or valve G, the check valve H, the water cock I, the glass tube J, the sliding gauge K, and the regulating feed valve L."

The case came to this Court by writ of error, upon this construction of the patent, and this Court affirmed the construction given it by the Circuit Court. The following are extracts from the opinion of this Court, taken from the Pacific Law Reporter of April 14, 1874. I do not find the case reported. It was Garratt *v.* Seibert:

"It is undoubtedly the law, that if the subject of a patent is a combination of several processes, parts or devices, the use of any portion of the combination less than the whole, cannot be an infringement. There may, indeed, be a patent *for the combination of many parts*, and *at the same time* for an arrangement of *some of the parts constituting another combination*, but still a part of the larger; yet, if there be no patent for the constituents, they are open to the public for use *in combination*, provided *all* the elements of the patented combination *be not employed*. It is therefore needful to inquire what are the elements of the combination which is protected by the patent. * * * * * *

It consists in the arrangement of several constituents, *no single one of which is claimed to be new*

These parts are a condensing pipe connecting the steam pipe with the lubricator—a reservoir for water, the product of condensed steam, a cup or vessel for oil or other lubricating material, placed vertically and somewhat lower than the water reservoir, but connected with it by a pipe leading from near its extremity to the bottom of the reservoir, and having near its upper end a pipe leading to the cylinder and valve chest, with a check valve at the oil vessel, and a stop cock between it and the cylinder, a waste cock at the bottom of the oil vessel, a screw plug at its top through which the lubricating material may be supplied, and a regulating valve by which the flow of water from the water reservoir into the oil vessel can be controlled. To these is added a glass tube, with a sliding guage arranged so as to stand vertically and parallel with the oil vessel, and connected with it at either extremity, its purpose being to indicate the amount of oil used. * * These are all the devices *necessary for the improved lubricator* claimed to have been invented by the patentee."

Thus the Circuit Court and this Court have decided that Seibert's patent is for an entire lubricator, consisting of no less than nine parts, counting the condensing pipe A, and water reservoir D, as but one; the water reservoir D, being but a continuation of the condensing pipe A, Ev. folio 75 and drawing of Ex. A. In the quotations above made, this Court says, the patent does not claim any one of these parts as new, and furthermore, that in such cases any one may combine and use in combination any number of those parts less than the whole without infringing the patent.

How then can it be consistently claimed, as it was in the Court below, that the combination patented by Garratt, of only two or three of those nine parts interferes with Seibert's patent, or infringes it, or was decided in that case to have infringed it. The substance of the decision by this Court is, that Seibert's patent taken as valid for all it claims, does

not show who invented the devices or sub-combinations found in his "improved lubricator." For all that adjudication shows or determines Garratt may have been the inventor of every device and sub-combination found mentioned in Seibert's patent, and may now be holding valid patents for every such device and sub-combination. If there is any meaning in language or authority in adjudications, the foregoing decision of this Court has decided that the sub-combination invented by Garratt, and patented to him, is not patented to Seibert, and the result follows, that the two patents are not for the same thing, and do not interfere with each other. Although Seibert's patent was for an improved lubricator, it does not follow but that there may be parts of that lubricator patented to others, and which parts he cannot use without their consent.

Garratt's patent has two claims only. They are as follows:

1st. "In combination with the oil reservoir A of a lubricator, the elevated condensing pipe or vessel F, the lower end of which is connected by an opening H, with the lower part of the reservoir A, substantially as and for the purpose hereinbefore set forth."

2d. "The combination in a lubricator of the cock or valve I with condensing pipe F and oil reservoir A, substantially as and for the purpose hereinbefore set forth."

The foregoing claims do not in terms cover an entire lubricator, as does Siebert's patent. Neither do they claim any of the parts as new by themselves, but only a combination of certain parts, *which parts so combined will not make by themselves a working lubricator.*

The first claim is really for a combination of only two parts—the oil reservoir and the condensing pipe—and that combination is only claimed when connected in a certain way. The second claim is for the combination of the cock or valve in the lower part

of the condersing pipe with the two parts named in the first claim, viz., the oil reservoir and the condensing pipe. Both these claims included, whether read together or separately, cover no more than a combination of three parts, to wit, the oil reservoir, the condensing pipe and the valve in the condensing pipe. By no possibility can these three things constitute "a lubricator." An outlet pipe at least must be added to them, so as to make them connect with the cylinder to be oiled, to make a lubricator. Still more parts must be added before the "improved lubricator," covered by Siebert's claim, is made. The two patents are not, therefore, for the same thing, because Siebert's patent covers *nothing less than an improved lubricator*, while Garratt's patent does not cover any lubricator, improved or otherwise, but only claims an addition of the condensing pipe and its valve to the reservoir of lubricators already constructed. The elementary rules in the foregoing quotations, that where a patent is for a combination of several parts, it does not cover a combination of any number of those parts less than the whole, is familiar to this Court.

Complainant's argument in the Court below treated the case as if Garratt's patent was for the entire lubricator shown in his drawings. This is, of course, entirely wrong. The claims in the patent limit its extent and operation, and nothing is patented but what is claimed, no matter how much is described.

Kidd *v.* Spence, 4 Fisher, 37.
Whipple *v.* Baldwin Man. Co., 4 Fisher, 29.

Complainant also claimed in the Circuit Court that the answer does not deny the allegations in the bill as to infringement and identity between the patents.

As to this, he is again wrong. The two patents are made a part of the complaint, Seibert's being Exhibit "A," and Garratt's being Exhibit "B." One *patent* can never *infringe* on another, and the identity of the two patents is denied in the answer in the following unmistakable language:

"Respondent denies that the invention described in the patent granted to *him* (*Exhibit 'B'*) was ever discovered or invented in whole or in part *by the complainant, and denies that the same or any part thereof was secured to the complainant by the patent, Exhibit 'A,' etc.*"

We think it plain that the two patents, Exhibits A and B are not in whole or in part for the same invention. They do not in any place cover ground common to both. They nowhere conflict in the least, and are not interfering patents.

Unless the two patents claim the same invention in whole or in part, they are not interfering patents, and this kind of an action cannot be sustained in regard to them.

Sec. 58 Patent Law of 1870.

Sec. 4918 Revised Statutes.

The Celluloid Manufacturing Co. *vs.* The Goodyear Dental Vulcanite Co.

10 Official Gazette, 41. Same case in 13 Blatchford, 375.

Gold and Silver Ore Separating Co. *vs.* U S. Disintegrating Co., 3 Fisher, 489.

Mowry *vs.* Whitney, 14 Wall., 434.

It was not alleged nor pretended that Garratt did not *apply* for a patent within two years from the time that he made the invention. No evidence was taken by either side upon any such issue. The evidence incidentally happens to show that Garratt applied for his patent within about a year and a half from the time he had the pipes put on the Roscoe lubricators, at Black Point, which was the first actual completion he ever made of the invention. On page 40, of the printed record, Garratt shows that he first saw "Weed's Exhibit D" about a year after he put those pipes on, and about six months before he applied for a patent, making, of course, only eighteen months between the time of the invention and his application for a patent.

The next inquiry is: Was Garratt the original

and first inventor of the combination patented to him?

This question must be decided upon the testimony in the case. Only twelve witnesses were sworn in the case.

The patent to Garratt is, of course, *prima facie* evidence in his favor.

Further than this, the bill of complaint shows that Garratt applied one of the condensing pipes on a Roscoe lubricator in the Fall of 1869, (printed record folios 6 and 7). It is proved by several witnesses that Garratt had two of the condensing pipes, *with regulating cocks in them*, applied to the Roscoe lubricators (one pipe to each) in the Fall of 1869. Garratt swears to it, printed record, pages 37 and 38; Snyder swears to it, *ib.*, pages 41, 42, folio 147, page 43 and page 46. White saw the pipes there in the Fall of 1869, *ib.*, 47. Montgomery swears the pipes were put on in the Fall of 1869, *ib.*, 49. Burnett swears that prior to November, 1869, Garratt explained to him how he intended to apply a similar pipe to Roscoe oilers on locomotive engines, *ib.*, 57. Watson, also, testifies that the pipes were put on in the Fall of 1869, *ib.*, page 21.

No part of the foregoing testimony is contradicted or disputed.

It is true that Garratt did not put the pipes on with his own hands. This, of course, was not necessary. It was enough that he conceived the invention, directed how the application of it should be made, and that such application was made under and according to this direction.

Seibert swears that he knew Garratt had been manufacturing Roscoe and other lubricators ever since he knew him in that country, and Garrett made for Seibert a *fac similie* of the model Philip's Exhibit C, page 37.

Philip's Exhibit C was an attempted invention of Seibert which proved a failure. It was a lubricator made with a piston intended to work with steam pressure. The lubricant was on one side of the

piston-head and the steam upon the other side. The piston was horizontal and there was no operations of the machine obtained from condensed water or hydrostatic pressure at all. The condensed water, if any happened to be made in the steam pipe, did not come in contact with the lubricant nor assist in operating the machine. The machine is explained by the witnesses, Weed, pages 32 and 33, and by Philip, pages 29 and 30, and by Seibert, folio 115, Seibert obtained a patent for that one dated Sept. 14, 1869. That patent is not mentioned in the bill at all and it is not pretended that Garratt's patent interferes with that Seibert patent of Sept. 14, 1869, at all.

As to the lubricator described in Seibert's patent set up in the bill, Exhibit A, Seibert himself swears that he did not invent it until May, 1870. *He himself swears that he did not discover the advantage of hydrostatic pressure in the lubricators until May*, 1870. Page 36 near the bottom, also folio 116, on page 34.

As it is an undisputed fact that Seibert did not commence to invent the lubricating cup patented by Exhibit A till May, 1870, and as it is also an undisputed fact that Garratt had contrived and caused to be applied the condensing pipes with their regulating cocks on the Roscoe lubricators at Black Point *six months before May*, 1870, it is difficult to see on what grounds the decree in this case can be maintained. It seems to be done upon Watson's sole solitary theory and testimony which is in effect that *he* advised Snyder to put in a *heating* pipe, and that therefore Garrett must have intended to have put in *heating* pipes instead of condensing pipes *although it is not shown that Garratt knew anything about Watson's advice to Snyder*.

There is another point to be kept in view, which is that Watson only advised a melting pipe without any regulating cock or valve, *a thing that could not be used successfully*. He has made a drawing and put it in evidence marked "Exhibit Watson, A"

(see page 21), which drawing, he swears, represents a drawing which he made to show Snyder how to put on the melting pipe. The drawing represents a Roscoe oiler, except that the steam and feed pipe which connected the inside of the cup from the orifice 1 on the drawing with the inside of the steam chest is left off. The pipe represented on the drawing marked "proposed pipe" did not belong to the Roscoe oiler, but it represents the heating pipe which Watson swears he advised Snyder to put on. *There is no regulating cock or valve in it*, and Watson does not say in his evidence that he suggested any, or proposed to have any in it.

The operations of the condensing pipes and regulating valves or cocks are explained by Burnett very plainly in the printed record (folios 197 to 200), and by Garratt (folios 127 to 131).

Watson, in advising a mere open pipe, if his testimony is credible, had no idea of condensed water or hydrostatic pressure, but was only thinking of conveying hot steam to the lubricant to keep it melted; a heating pipe alone was all he wanted. *In all this there was not the least conception of Garratt's invention.* What Garratt invented was a combination of steam pipe and regulating cocks or valves so arranged that by merely closing the lower one the steam was arrested and held in the pipe until it condensed and formed a column of water in the pipe. By no possible means could this be done without the regulating cock or an equivalent in the pipe. With the column of water he obtained a hydrostatic pressure, the steam pressure being the same above and below the lubricant. With the regulating cock or valve he could let in underneath the lubricant more or less of the condensed water, and thus regulate the feeding of the lubricant at pleasure.

All of this was accomplished by Garratt in 1869, and none of it was thought of or advised by Watson.

It is proper to notice here the action of Seibert, which is shown without any conflict in the evidence.

While he was at work on his piston lubricator he got his work done at Garratt's factory. He was at work on that worthless affair and getting his work done at Garratt's when Garratt applied the condensing pipes, regulating cocks and hydrostatic pressure, to the Roscoe oilers at Black Point, in 1869. When Seibert's piston oiler proved a failure, he took his work away from Garratt's factory and went to Weed's with it, and then, *six months after Garratt's was at work, Seibert claims to have discovered the same thing anew.* Seibert swears he knew Garratt was manufacturing lubricators (fol. 124). It seems hardly possible that Seibert was ignorant of what Garratt had done, and that he went to Weed's to have his new lubricator made, because he felt that he was taking what belonged to Garratt. It is no wonder Garratt told Watson "that Seibert had stolen the thing from him" (see top of p. 22).

For the testimony of the foregoing see Weed's evidence, pp. 32 and 33; Seibert's evidence, p. 34 and fols. 123 and 124 on pp. 36 and 37.

The allegation of the complaint that the pipe put by Garratt to the Roscoe lubricator at Black Point, in 1869, was not a condenser, is flatly contradicted by every witness that gives a sensible opinion upon the subject.

It was well known that the Roscoe lubricator operated by means of condensed water. The steam passed up from the engine cylinder through a pipe to the top of the lubricator, there condensing into water, which being heavier than the lubricant sank to the bottom and displaced its volume of the lubricant, which flowed out to the cylinder through the same pipe that admitted the steam to the top of the lubricator. Of course the more condensed water there was the more freely the machine worked, and when it failed to work it was for want of condensed water. There is one fact in this case which proves this with convincing vigor. All the lubricators made by Garratt and Seibert since that time, that

have done good work, operate upon the Roscoe principle, (*i. e.* by condensing steam and letting the water formed by the condensed steam displace the lubricant and cause it to overflow into the steam cylinder) and every one of their new improved machines has a condensed pipe with regulating valves or cocks placed practically in the same relative position as Garratt placed those at Black Point, and doing of course the same kind of work. In all of them the condensing pipe connects with the main steam pipe above and with the oil reservoir below. In all of them a regulating cock or valve holds the steam confined in these pipes so that it cannot pass into the oil reservoir any faster than the oil is required to overflow into the cylinder, which probably will not exceed in amount one quart in a day. In all of them the steam thus detained in the pipes there condenses into water, and is used, by virtue of its hydrostatic pressure and specific gravity to compel the required overflow of the lubricant.

See Hillman's statement of how Roscoe's cup worked, ev., p. 43.
Also Watson's ev., folio 73.
Also Snyder's ev., folios 152 and 153.
See also, Burnett's explanation in his deposition.

Seibert also states that steam will condense in a short time in the pipe; also, his further explanation of his last two lubricators, Watson's Exhibit B, and Weed's Exhibit D, ev., p. 35.

Garratt has been a witness in the case, and his testimony shows him to be a man of intelligence. Being a manufacturer of lubricators he must, from his experience and intelligence, have thoroughly understood the operation of condensed water in forcing out the oil. He must have known that more heat would not produce more condensation, but would destroy what already existed in the Roscoe lubricators. He knew that condensed water made the Roscoe lubricators feed, and nothing but condensed water would make them feed. The lubricators were within two inches of the steam pipe and

ten or fifteen inches from the steam chest (ev., folio 154), and their upper end was filled constantly with hot steam. Under all these circumstances it is incredible that Garratt should have thought more heat was needed, and there *is not a word of testimony which states that Garratt, before the pipes were put on, ever said that more heat was needed or that the tallow congealed, or that the pipes were to be for melting the tallow or for any other than condensation pipes.*

The course taken to show that Garratt did not put the pipes on the engines at the Water Works to act as condensers but as heaters for melting tallow, is decidedly curious. Twelve witnesses have been examined in the case, viz.: Hillman, Watson, Stockman, Phillips, Liboomkin, Weed, Seibert, Garratt, Snyder, White, Montgomery and Burnett. Of these witnesses, neither Hillman, Stockman, Phillips, Weed, Seibert, Garratt, Snyder, Montgomery or Burnett state facts or give opinions to the effect that either Garratt or Snyder ever intended or supposed that the pipes were put on as heating pipes, or to melt tallow, or that they would so act.

The witnesses Watson, Liboomkin and White, are the only ones who undertake to show that the pipes were put on for heating pipes, and the way they do it is, in effect, merely by Watson's saying that he advised Snyder, *not Garratt*, to put the pipe on to melt the tallow, and he, Watson, chalked it on a board (ev., pp. 20, 21, 30 and 47).

Of these three the evidence of Liboomkin and White amounts to almost nothing. Liboomkin's evidence is all on page 31 of the printed record. He merely testifies that in either 1869 or 1870 he saw it, "Watson's Exhibit A," in the engine room of the Pioneer Woolen Mills on a piece of board about twelve inches wide, drawn with chalk. That the drawing was made by Charles Watson. That he saw Mr. Snyder there at or about that time. He was engineer of the Spring Valley Water Works. In the evening he, witness, came "into the engine room

"and asked Watson what this drawing was for. "He told me it is not for us. He said there is a pipe "which we are going to put in the main pipe for "melting the tallow in Snyder's cup, they have "some trouble about it."

He does not testify that either Snyder or Garratt ever saw or knew anything about that drawing. Besides he states a physical impossibility. "Watson's Exhibit A" was *not* drawn with chalk nor on a pine board.

White's testimony is on page 47 and 48. He testifies that he saw the pipes at the Water Works engines in 1869, and Snyder told him the object of the pipes was to heat the tallow and keep it in a liquid state so that it would feed, but said the pipe failed to do it because the pipe filled up with cold water and would not heat the tallow. He swears the lubricators were not working well while he was there, but finally admits that the whole operation was carried on inside of metallic enclosures, and he could not see any part of the lubricator's operations. He concludes by saying, "all this is from "hearsay what I have heard from Snyder. *I did "not see any of the results nor any of the opera-"tion.*"

This evidence is all hearsay, and is not competent testimony. Its only tendency is to prove the pipes were *not heating pipes, and were condensing pipes*, the very things which Garratt put them on to be, and the very things required to make the Roscoe oilers work better.

None of this evidence in any way connects Garratt with the absurd idea that any heating pipe was wanted, or that the pipes he put on would act as heating pipes, or in any other way than as condensing pipes.

I will here call attention to some of the eccentric features of Watson's testimony and see whether its importance equals its prominence in this matter. His evidence is on pages 20 to 26.

In the first place he claims that he advised Snyder

to put on the pipe as a melting pipe, and at that time he was a practical engineer. From this it would seem that he did not understand his business enough to know that the pipe would tend to further cool instead of heating the tallow. This ignorance on his part is evidently simulated for the occasion, for when he comes to speak of the same kind of a pipe in Seibert's cup he calls it, without hesitation, a condenser, and says (ev. fol. 73): "The lubricant in the Roscoe cup is at all times, or while working, exposed to considerable heat; it keeps the oil cooking, and is injurious to the lubricant. In the Seibert cup the lubricant is kept at its normal temperature," &c.

Q. In the operation of the Seibert lubricator what is there about it which prevents the cooking of the oil which occurred in the Roscoe?

A. The steam comes in contact with a column of condensed water, or a large reservoir of water, such body of water interposing itself between the oil and the steam.

Q. When in use *does that condenser form a part of the pipe* which connects the steam from the steam pipe of the engine with the bottom of the lubricator?

A. When in use *it forms part of it. When in use it must be connected.*

Q. In the Roscoe oiler did the steam come in immediate contact with the lubricant when in use?

A. It came in contact with the upper surface of the lubricant.

Q. Does the condensed water in Seibert's oiler prevent the cooking of the lubricant, by heating or by cooling it, which?

A. Seibert's oiler when properly used is subject to no heat; no cooking goes on when properly used.

Q. Are not the Seibert lubricators put in the same position on the engine as the Roscoe oiler was?

A. Yes.

Q. Then why is not the Seibert oiler exposed to the same degree of heat and consequent cooking of

the lubricant while in use, that the Roscoe oiler was?

A. In the Seibert lubricator a body of cold *condensed* water is interposed between the lubricant and the steam. In the Roscoe oiler the steam is admitted directly to the surface of the lubricant; whatever steam condenses passes to the bottom of the cup and floats an equal amount of lubricant out along the same pipe.

Q. Then does that column of condensed water operate to heat the lubricant hotter than was done in the Roscoe oiler, or does it operate to keep it cooler, when in use?

A. When in use in the ordinary way in the Seibert oiler, the lubricant cannot get hot.

Q. Please state directly whether the column of condensed water in Seibert's oiler operates to heat the lubricant hotter than was done in the Roscoe oiler, or whether the operation tends to keep the heat of the lubricant reduced?

A. It tends to keep the temperature on the lubricant reduced, or at its normal temperature.

Q. In what respect did the pipes put on the Water Works' engines by Snyder operate in the same way as the condenser and its connecting pipe in Seibert's oiler, if at all?

A. *It did not operate in that manner at all.*

Q. In the way that Snyder used those pipes was there usually a column of condensed water standing in them, between the steam in the steam pipe and the lubricant in the oiler?

A. At times *a column of cold condensed water stood in the pipe;* when the water got cold it was drawn off for the purpose of *getting* heat into the cup—heat or hot *water in the cup.*

Q. Did not Snyder get his condensed water for feeding the oilers and making the tallow flow from those pipes that he attached to the Roscoe cups?

A. I cannot answer that question because *he did not get his condensed water for any such purpose.*

Q. Could Snyder make that tallow flow a particle

while the cup was in use except by the use of condensed water?

A. With cold condensed water, no; with hot, yes.

Q. How do you mean by that answer; that he was obliged to have cold condensed water, or hot condensed water, which?

A. Hot condensed water.

Q. Did those pipes which he attached furnish him with the hot condensed water which operated the oilers, or not?

A. Under certain circumstances they would.

Q. Did they furnish it as he used them?

A. By occasionally drawing off the cold condensed water which accumulated, *they did.*

Q. Can Seibert work his machine with tallow and cold condensed water?

A. I imagine it would be necessary to apply a heating pipe.

Q. Is there a heating pipe attached to the Seibert oilers which you have used?

A. No.

Q. Have they worked well without a heating pipe?

A. Yes; those I have used.

* * * * * *

Q. Did Snyder, in using those oilers with pipes at the Water Works, always keep some condensed water in those pipes, as far as you know?

A. I don't know as I could state what Snyder did. At times he removed that condensed water when it became cold or at too low a temperature, by the cock, J.

Q. Why did you recommend *as a melting pipe for Snyder* the very kind of a pipe which *operates as a cooler for Seibert?*

A. I recommended the application of a melting pipe. The pipe was put up by Snyder much longer than I should have put it up, consequently *a large amount of condensation took place in the pipe*, and it was necessary frequently to draw off

the condensed water, so as to allow steam to follow and keep the lubricant melted.

Q. Still, why did you recommend as a melting pipe one which operates only as a condenser, and consequently as a cooler?

A. I recommended a melting pipe—one which, had it been properly proportioned by Snyder, would have operated as a melting pipe, and not as a condenser.

Q. Then did Snyder put on pipes as you recommended, or did he put them on differently from what you recommended?

A. I merely advised Snyder to put on a melting pipe, showing him in what position I would attach it, but said nothing to him regarding the length of said pipe.

Q. When you recommended melting pipes, did Snyder, in fact, put on condensing pipes?

A. The pipes he put on were too long; too much condensed water collected in the pipe and interfered with the purpose for which the pipe was intended.

Q. Have those pipes always operated as condensing pipes when in use, from the time they were put on up to the present time, so far as you know?

A. I can't say they operated as condensing pipes, although condensation took place in them. They were not put on for any such purpose.

Q. Explain how it is possible for condensation to take place in these pipes, and the pipes not operate as condensing pipes?

A. For the reason when condensed water accumulated in the pipes it was removed, as otherwise it entirely prevented the steam coming into contact with the lubricant.

The foregoing from Mr. Watson's testimony impeaches both his veracity as a witness and his intelligence as a man.

When questioned about Seibert's lubricator, he

thoroughly understood and stated the operation of its condensing pipe. In Seibert's cup he makes the pipe operate as a condensing, and consequently cooling pipe, and not as a heating pipe, and assigns to it its proper value and importance. But when he comes to Garratt's pipes on the lubricators at the Water Works, although they occupy the same relative positions as Seibert's pipes, and although from the first they operated as condensing pipes, still he insists that they are melting pipes only; that although the water condenses in them they do not operate as condensing pipes, and gives as the reason for saying so, that after they condensed the water Snyder would sometimes draw it off. It is certain that if he ever did advise Snyder to put on a heating pipe that Snyder did not follow his advice, as he, Snyder, never did put on any heating pipes or device. The pretense that *he advised Snyder to use as a heating pipe on Roscoe's cup the very kind of a pipe which operates as a cooling pipe in Seibert's cup*, is of course incredible upon any other theory than that Watson *then* thought a heating pipe was needed, and also then believed that the pipes he advised Snyder to put on would furnish heat instead of cold, and has since learned better. True, he did not advise the regulating cocks, and the naked pipe, as he says he advised it to be attached, would not probably have retained the steam or condensed it. They probably would have been heating pipes and nothing else, and hence he might have answered that he did not advise the same kind of pipe used by Seibert and Garratt because there were no cocks in them to enable their use as condensing pipes. This theory, however, Watson does not adopt. He does not claim to know more now than he did then. He comes on to set up himself instead of Garratt as the inventor of the pipes, and if he was to admit that all he done then was to give mistaken and unpractical advice, of course his claim to the honor of the invention would be gone, and his testimony would not be of any

weight or value in the case. He comes on to rob Garratt of the invention. He is put on as a witness by Seibert for that purpose. The character of his testimony shows that he is anxious to serve Seibert's cause, and tries to do it by working a miracle, viz.: by changing cold to heat without varying the temperature. His evident interest in the case, the contradictions in his testimony of existing facts, and of demonstrated natural laws, his senseless inconsistencies and absurdities are enough to discredit him entirely.

He is, in addition to all this, flatly contradicted by Snyder.

See Ev. (fol. 143) where Snyder says, in speaking of Watson:

"I don't remember of having anything to say to him about it."

Q. Do you say that you and he did not consult about the matter at that time?

A. Not to my recollection.

Q. Did you see him constantly at that time?

A. No; I passed his engine-house every day, twice a day; I might pass it a week, every day, and not see him.

Q. Did Watson ever show you a draft of the pipe to be attached to your lubricators, or which he recommended to you?

A. *No, sir; Watson never showed me a draft, nor do I recollect him recommending anything about them.*

Snyder is the only man that knows who first told him to put the pipe on, and how to do it, and he swears as follows, about it, Ev., folios 157 and 158:

"Do you remember whether Mr. Garrett was the *first* man who spoke to you about the pipes or not?

A. Yes, *he was the first.*"

Snyder and Garratt both testify that the pipes were Garratt's invention, and that he had them put on to the Roscoe's lubricators as condensing pipes, to obtain more condensed water to make the lubri-

cators feed better. And that they were an immediate practical and successful improvement to the lubricators, is shown beyond any room for doubt.

And again, I call attention to the fact that there is not a word of testimony that states that Garratt ever said or thought that more heat was needed, or that the tallow congealed in the Roscoe cups, or that the pipes were heating pipes. The theory of the evidence is, that all this nonsense *originated with Watson*, and that on his advice Snyder tried to be equally senseless and adopt it. No witness undertakes to trace these impossible theories to Garratt, but the proof is full and *uncontradicted* that Garratt, *at the first, said the pipes would condense*, and never pretended that they would do anything else (see fols. 141, 142; and fols. 126 to 134).

Watson's positive swearing to what were the intentions and purposes of the parties who put the pipes on at the Water Works is simply impertenance. Intentions and purposes are mental operations only, and Watson could not have known the intentions and purposes of Garratt or Snyder better than they knew them themselves; yet, with cool effrontery he contradicts them both *as to what were their intentions and purposes;* and that, too, not because they ever expressed the intentions and purposes which he ascribes to them, but only because he, Watson, gave certain advice to Snyder, just as if the limit of his, Watson's, advice to Snyder compassed the extent of Garratt's thoughts and intentions. Yet, Watson so swears without a blush.

The evidence being full and plenary that the pipes were put by defendant's order upon two of the said Roscoe lubricators on two engines, and that the pipes with the regulating valves or cocks were put there in the Fall of 1869, several months before Seibert claims to have commenced to make one, and the proofs showing beyond a doubt that the said pipes were condensing pipes, the complainant *still takes the position* that Garratt put the pipes there to melt tallow and not to condense

water, and for that reason his patent should be set aside. This position is as ludicrous as a legal proposition as it is proved to be when viewed as a question of fact. I will now discuss the question as a legal proposition.

Garratt was agent for, and a manufacturer of the Roscoe lubricators. He placed them upon the engines at Black Point. For some reason they did not work well. Garratt invents a remedy, the pipes with their regulating cocks, and applies the remedy to the lubricators. His remedy succeeds, the pipes are an improvement, and they have made the lubricators work well from the time they were applied up to the present time.

Now it seems to be seriously contended that if Garrett thought the pipes were heating pipes and were put there by him to melt tallow instead of condensing water and exerting a cooling effect, that he could not take out a valid patent for his improvement to the lubricators notwithstanding that he invented the "improvement" to the lubricators and his improvement proved a grand success.

The patent law says:

"*Any person who has invented or discovered any new and useful art, machine*, manufacture or composition of matter *or any new and useful improvement thereof*, not known or used by others in this country and not patented or described in any printed publication in this or any foreign country before his invention or discovery thereof, and not in public use or on sale for more than two years prior to his application, unless the same is proved to have been abandoned, *may*, upon payment of the duty required by law and other due proceedings had, *obtain a patent therefor*."

By reading what I have italicized by itself and skipping the rest of the above quoted section of the

patent law, we obtain a condensed statement of all that Garratt had to do to obtain a valid patent so far as the invention was concerned. If he either invented or discovered an improvement to the Roscoe lubricator, he was entitled to his patent for the improvement. Whether he comprehended the hidden workings of the steam, tallow, oil and water that was carried on out of human vision, in the hollow cavities of the brass oil reservoir and iron pipes, made no difference so long as he described all that was necessary to enable a person skilled in the art to make and use the improvement. The Roscoe lubricator was a machine which failed to work satisfactorily; Garratt invented and applied an additional pipe which made the lubricator work better. The additional pipe was therefore an improvement to the lubricator. If Garratt thought it improved the lubricator because it furnished more heat and melted the tallow, he may have been mistaken, but still knew that the the pipe made the lubricator do its work better. If, on the other hand, he believed the pipe held condensed water and worked as a cooling instead of a heating agent, he still may have been mistaken, but the pipe done its work notwithstanding. Whatever Garratt may have thought while he was having the pipes applied, and whatever ideas of metaphysical theories of whys and wherefores may have filled his head, as he stood looking at the new results he had accomplished, made no difference; the pipes made the lubricator do its work well and paid no attention to Garratt's beliefs or reasons or theories. The pipes are still an improvement to the lubricators, and are still doing their work steadily along, not only regardless of Garratt's frame of mind, but even of Seibert's desires as an inventor. Watson's exhibition of clashing theories and facts that stultifies his evidence and spoils his philosophy, have all failed to affect the working of those pipes in the slightest degree. All of these things have failed to make the pipes condense a single drop, more or less, of water; melt a drop,

more or less, of tallow; or raise the local temperature a single degree higher, or sink it a particle lower; in spite of all these things the pipes still remain a practical success, and a permanent valuable improvement to the Roscoe lubricator and all that class of lubricators that work by forcing the lubricant forward by means of condensed water.

In the case of Woodward *vs.* Dinsmore, 3 Fisher, 166, the Court says:

"I am by no means sure that the complainant "was himself aware of the *rationale* of his own in- "vention when he took out his patent in 1857. He "did what never seems to have been done before: "he made a great improvement, the value of which "was at once recognized by the photographic world. "But whether he was able, in his original specifica- "tion, to give the *rationale* of his invention or not, "*he nevertheless gave the invention itself to the* "*public*. He was the first and original inventor in "the eye of the law, and was entitled to a patent; "and subsequently, when he had it in his power to "make a fuller explanation and more efficiently "protect himself, he had a right to a reissue."

In Piper *vs.* Brown, 4 Fisher, 182, in deciding upon a patent for a freezing process, the Court says:

"It is, however, claimed that Piper at this time "had not conceived the idea of any advantage in "such separation, apart from the convenience of "renewing the supply of the freezing mixtures "without admitting the surrounding atmosphere "into the preserving chamber. This is equivalent "to saying that while his contrivances accom- "plished the result of preserving fish and animal "substances in the mode set forth in his caveat, and "subsequently in his specification and claim, a use- "ful result of a new process, he was unacquainted "with the philosophy of his discovery. Upon the "hypothesis that this were so, that by a series of "experiments he had discovered only that this pro-

"cess, applied exactly in the mode described, pro-
"duced the desired result, and the process was new
"and the result useful, but that he did not under-
"stand why the mixture of salt and ice produced a
"freezing mixture, or why the effect of contact of
"that freezing mixture with the atmosphere sur-
"rounding the fish to be preserved was injurious;
"yet, if he had discovered the practical mode and
"contrived the practical means of accomplishing the
"result, he might be entitled to a patent for his new
"and useful art, although ignorant of the philo-
"sophical or abstract principle which was involved
"in the exercise of the art itself. The discovery of
"the philosophical or abstract principle alone
"would not have been the subject of a patent. The
"thing to be patented is not the elementary prin-
"ciple, but the principle applied to some art," etc.

In Many *vs.* Siger, 1 Fisher, 28, the Court says:

"From our inability to penetrate the secrets of
"nature, we may not be able to detect the new prin-
"ciple or power otherwise than by its effects."

In Curtis on patents, about the middle of Sec. 32, he says:

"*The law does not look to the mental process* by which the invention has been reached, *but to the character of the result*," etc.

And near the middle of Sec. 36, the same author says:

"It is obvious that the *result* in such cases *furnishes a complete test* of the sufficiency of the invention," and at the beginning of Sec. 37, "the same test is also indirectly applicable to another class of cases where a particular instrument or machine or combination of machinery is the subject of a patent."

I have quoted the above to show that as a matter of law, so long as Garratt applied the pipes and thereby obtained a new and useful result in the working of the lubricators, he is entitled to

his patent, no matter whether he believed the new result was obtained by melting tallow, or by condensing water, or by both of these operations, or by neither of them. It was not necessary that he should understand the *rationale* or philosophy or abstract principle of the internal workings of the pipes. They were improvements to the lubricators, and that was enough to satisfy the law.

We respectfully insist that in any and every view that can be taken of the case, the decree setting aside Garratt's patent, should be reversed. The evidence shows without conflict or contradiction that he was the first and original inventor of what is patented to him, and also, that his patent was not an interfering patent with Seiberts.

Respectfully submitted,

M. A. WHEATON,
Counsel for Appellant.

Supreme Court of the United States.

WM. T. GARRATT, APPELLANT,

vs.

NICHOLAS SEIBERT, APPELLEE.

REPLY TO APPELLEE'S BRIEF.

There are so many glaring inaccuracies in the appellee's brief that I think an answer to it is proper for the purpose of pointing them out to the Court.

In the very beginning of the appellee's brief, it says:

"On the 14th of February, 1871, Seibert obtained a "patent, No. 111,881, (see Exhibit A, plate 1,) on an Im- "proved Lubricator, *covering the principle of hydrostatic pres- "sure for feeding oil from the cup*," &c.

The inaccuracy of this statement is in the lines which I have italicized. The claims of the said patent, No. 111,881, are:

"1. The arrangement of a cock M, passages S S', and "tubes O and P, with the oil reservoir F and gauge J R, "as herein shown and described for the purposes specified.

"2. The improved lubricator, consisting of the parts "herein described, constructed and arranged substantially "as specified."

Neither one of these claims say a word about hydrostatic

pressure, *nor does either of the claims cover the parts of the lubricator by which hydrostatic pressure is produced.*

The first claim covers a heating apparatus, which is entirely worthless, and has been thrown away by Seibert. This first claim does not include in its combination any of the parts by which hydrostatic pressure is produced.

The second claim is for the entire lubricator, and covers a combination of parts only, and the combination necessarily includes a greater number of parts than those which create and operate the column of water and hydrostatic pressure. Under the familiar rule that a claim for a combination of parts only, does not cover any number of those parts less than the whole, the patent cannot possibly be held to cover directly nor indirectly the principle of hydrostatic pressure.

This patent has been construed by this Court before. Please see appellant's opening brief, pages 10 and 11, where the former construction is shown.

The second inaccuracy in appellee's brief is the statement that Garratt's patent is "*for a lubricator.*" It is not for a lubricator, but is only for certain specified improvements in a lubricator. His claims are at the top of page 8 of the record.

Although Seibert got his patent first, still the improvements patented to Garratt were invented and in use before Seibert invented his lubricator or discovered the principle of hydrostatic pressure, as applied to lubricators. So far in the case this has been undisputed. See references to the record, including Seibert's allegation in the bill, and his own evidence, in our opening brief, page 15 *et seqtor.*

The appellee's brief also asserts that the principle of hydrostatic pressure was developed in Seibert's cup, made in

1869, an elevated sectional drawing of which is bound in the brief between pages 2 and 3. On page three is printed a quotation from Seibert's testimony to establish this. But it is clear that the assertion is improvidently made, and is not sustained by the evidence cited. The cup made by Seibert in 1869 was a piston lubricator in which the lubricant was upon one side of a piston head and the condensed water, whenever there was any, was upon the other side of the piston head. The *weight* of the condensed water had nothing to do with driving the piston head. That was driven by steam power. The rod C, (see drawing in appellee's brief,) extended out into the open air. This took off some of surface from *that side* of the piston head, and gave a greater surface, and consequently greater steam pressure on the opposite side of the piston head. This furnished the power for driving forward the piston head, and the lubricant was forced to its destination by driving forward the piston head, and in no other way. The steam might and probably would condense in the pipe, and if it did, the condensed water would weigh a trifle more than the steam. But if so, it would only furnish a trifle more power where the steam already furnished power enough. The heighth and weight of water were not *balanced against* the heighth and weight of the lubricant.

Nor does the said evidence cited in appellee's brief, (page 3,) so state.

That evidence says that the condensed water made the cup work better, because it *cooled the packing on the piston*, and not because of the operation of any hydrostatic pressure.

In appellee's brief a part of Phillips' evidence is quoted, but the following, from page 29 of the record, was not quoted, viz.:

"Question. Was there a piston head which separated the steam and water from the lubricant in that?

"Answer. There was.

* * * * *

"Question. Did it make any difference in the working of the machine, whether there was any condensed water in it or not?

"Answer. I think not."

The following from Weed's evidence (Record, page 33) is not quoted in appellee's brief:

"Question. In Phillips' Exhibit C *does it make any difference whether* the water is heavier than the oil or not?

"Answer. *I should say none.*

"Question. Then *does the difference between the specific gravity of the two bodies*, oil and water, enter into the working principle of Phillips' Exhibit C?

"Answer. *Not in my belief.*

"Question. *In that one respect*, then, does Phillips' Exhibit C and Watson's Exhibit B work upon the same principle?

"Answer. *I should say not.*"

The following is from Seibert's testimony, Record, page 36. Referring to Seibert's patent of 1869, for the lubricator, Phillips' Ex. C, the question is also asked him:

"Question. In that patent, did you say anything about hydrostatic pressure?

"Answer. I did not.

"Question. Why did you not?

"Answer. Because *at that time I did not thoroughly understand that another principle was involved* until I discovered it *in* 1870, *after further experiment.*

* * * * *

"Question. When did you *first* discover the benefit of hydrostatic pressure, as applied to lubricators, as shown in the various exhibits?

"Answer. Sometime *in the early part of May*, 1870."

The balance of Seibert's testimony, on the same page, shows that it made no difference in Phillips' Exhibit C

whether the condensed water and the lubricant were of different specific gravities or not. The foregoing quotations are from the evidence of Seibert and his own witnesses. It is the evidence of these witnesses which, the appellee claims, proves that the lubricator made by Seibert, in 1869, worked upon the same principle as his lubricator, of 1870, described in Exhibit A of the bill, so far as the use of hydrostatic pressure was concerned. Of course the evidence proves *just the opposite*.

If it were as appellee claims, however, the bill should have declared on the patent of Seibert of 1869, and not on the patent of 1870. *The patent declared on in the bill of complaint does not cover Phillips' Exhibit C, nor any part of it.* Phillips' Exhibit C is covered by the patent of September 14, 1869, (Record, folio 114,) and is not mentioned in the bill.

The terms, "lubricators," "oilers," and "cups," I understand to be convertible terms as used by the witnesses. One means the same as the other, without any regard as to whether oil or tallow is used in them.

On page 8 of appellee's brief, the effort is again repeated of trying to force Garratt into the senseless position of thinking or supposing that a heating apparatus was needed in the Roscoe lubricators. So far as the evidence shows, Garratt never thought so, never said so, and never acted so. As I understand appellee's brief, it asks this Court to believe as a fact that the remedy actually required for the Roscoe cups was more heat, and then, *for that reason*, to assume that Garratt was inventing a heating pipe only. And all this in the face of the fact that what Garratt did apply was *not* a heating pipe, but a pipe with regulating valves for *making* condensed water, for *holding* condensed water, and *for regulating the feed* of the condensed water.

How can any counsel ask this Court to believe that con-

densed water has more heating power than hot steam, in the face of the well-known fact that water cannot be heated to more than 212 degrees without turning it into steam. Garratt well understood the Roscoe cup, and well knew that the more condensed water that was got into it the more it would work. *It worked by condensed water only.* The complaint was that the cup would not work. The natural reason would suggest itself that if it did not work there must be a lack of the only power that had been or could be applied to it to make it work, viz.: condensed water. Condensed water would make it work, and there was no other power on earth that could be applied to it to make it work. Condensed water was its life. It would no more start without condensed water than a steam engine would start without steam. The reason why it did not get condensed water enough was because it was kept too hot. It was on the hot engine which worked with steam a great deal above the boiling point of water, and it was kept so hot that the steam in it remained steam. There was too much heat to allow it to condense. If this were not so it would have condensed. All this Garratt doubtless understood, because he applied pipes and cocks which *did, in fact,* furnish and regulate a supply of condensed water to the cup. *This is what he did,* and it *proved a perfect remedy.* The fact that he did it is undeniable. The identical pipes which he put on to the Roscoe cups on the water-works engines in 1869 have been there, in constant and successful operation, ever since. They are condensing pipes now, they were condensing pipes when put on, and have always been condensing pipes. This is the fact *and the proof.* Then why assume that Garratt did not know what he was doing. The only place in the record which connects Garratt with the idea of Watson's heating pipe is WHERE HE OBJECTED TO IT. The evidence is quoted on page 10 of appellee's brief, where Garratt's objection is italicised. And that objection of Garratt to a heating

pipe is quoted *as proof* that he thought he was having a heating pipe put on.

I call attention to the fact that there is no evidence showing that Garratt ever saw or knew anything about the drawing that Watson made. The evidence quoted by appellee is incompetent, because only hearsay. It was what Snyder told Watson that Garratt had said. It is as follows:

"Snyder told me he would see Garratt about it. Some "time after—I think the next day—he told me he had seen "Garratt *regarding the proposition to put a melting pipe on the* "*Roscoe cups*, and MR. GARRATT OBJECTED TO THE PIPE BEING "PUT ON," &c.

This shows, if it shows anything, that Garratt objected to any "*melting* pipe." Yet this is *the* evidence quoted to show that Garratt did *not* object to a melting pipe, but wanted one put on.

Again, where is there any reason in asking the Court to hold that Garratt's pipes were heating pipes, yet that Seibert's pipes placed on the cups in the same relative position, and with the same relative connections, and regulating valves or cocks, are condensing pipes. Upon what basis of reasoning can the appellee ask the Court to hold that the same devices applied to the Roscoe cups operate one way under natural law, but when applied to Seibert's cups operate just the opposite way under the same natural laws and under exactly the same circumstances? We submit that because Watson has sworn to such an impossible state of things, and because of his answers against what he evidently knew to be facts, that he has impeached himself.

The fact that Garratt first had the pipe made too long does not detract from the invention. It is seldom that the first machine made by any inventor does not require altera-

tion. The principle was there, and it accomplished the desired result. It in fact *accomplished it too much*, and the pipe was shortened.

As to the evidence of Montgomery that the pipes and *cocks* were left open, it is probably technically correct, but still it does not change the nature of the case any. Garratt's patent describes the lower end of the condensing pipe as being provided with a "*valve or cock*" for checking the flow of water. (Record, folio 22.) It also shows how the valve in the outlet pipe may be used for the same purpose, but objects to it because it is liable, when oil is used, to get gummy and less reliable.

Burnett's evidence—folio 195—shows that a screw *valve* was put in the lower end of the pipes at the water works. That is where the patent calls for a "valve or cock." Montgomery and Snyder do say that the pipes and cocks were kept open, but do not say the same of the valves. It made no difference in the operation of the pipes whether the "feed" was regulated by a cock or a valve, nor did it make any difference which valve was used as a regulator. By nearly closing any one valve or any one cock, either the influx of the steam or water was regulated or the outflow of the oil was regulated. Neither the steam or water could come into the pipes and cup any faster than the oil was let out, nor could the oil go out any faster than the steam and water was let in to drive it out. So long as either a pipe or cock was sufficiently closed to regulate the feed, so long the circulation was retarded enough to give the steam time to condense and fill the pipes with water. I do not believe that even Watson's pipe, without any cocks or valves, would have been either a heating or melting pipe. I believe that even in that the steam would have condensed until a column of water would have stood in it high enough to balance the weight of the lubricant in the cup; and so long as it con-

densed any water, so long it would have been a cooling and not a heating or melting pipe.

Another inaccuracy of appellee's brief is at the bottom of page 14, where it assumes that Garratt's model is the counterpart of Seibert's invention. That Hillman, then Garratt's partner, made two cups in 1870, exactly like Seibert's cups, I do not question, but neither of those was used by Garratt in applying for a patent. Hillman explains the difference, at folio 49, and states that neither of those two, which he made, were sent to Washington to accompany Garratt's application for a patent. The difference between the drawings in Seibert's and Garratt's patents also show this difference in the models, as do also the exhibits, the lubricators themselves.

Another gross inaccuracy is at the top of page 9 of the appellee's brief. It says "unfortunately for Garratt's *veracity*, Snyder swears he never used anything but tallow," &c.

Unfortunately for the veracity *of the appellee's brief* Snyder did not so swear, but he swore quite to the contrary. At folio 147 of the record is the following portion of Snyder's testimony:

"QUESTION. What lubricant did you use in lubricators, and how many times did you use a different one?"

"ANSWER. *I used oil* and tallow both. Sometimes *I used oil*, and then, again, tallow. Now *I am using oil altogether*."

Respectfuly submitted,

M. A. WHEATON,
Counsel for Appellant.

IN THE

SUPREME COURT

OF THE UNITED STATES.

WILLIAM T. GARRATT, Appellant,

vs.

NICHOLAS SEIBERT, Appellee.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF CALIFORNIA.

IMPROVEMENT IN LUBRICATORS.

Brief of A. H. Evans,

Counsel for Appellee.

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WASHINGTON, D. C.

WASHINGTON:
D. TURNER & CO., LAW AND TRADE PRINTERS.
1878.

In the U. S. Supreme Court.

WILLIAM T. GARRATT, Appellant,

vs.

NICHOLAS SEIBERT, Appellee.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF CALIFORNIA.

Brief of A. H. Evans,

Counsel for Appellee.

—o—

STATEMENT OF FACTS.

On the 14th February, 1871, Seibert obtained a patent No. 111,881 (see Exhibit A, plate 1), on an Improved Lubricator, covering the principle of hydrostatic-pressure for feeding oil from the cup, which patent was sustained by the court in a former decision (No. 35), rendered at October term, 1873, in a suit between these same parties.

Subsequently, to wit: on the 19th November, 1872, Garratt obtained a patent, No. 133,217 (see Exhibit B, plate 2), for a lubricator involving the same principle, and almost an identical copy of Seibert's invention. Garratt obtained a reissue (No. 5328) of this patent, dated March 18, 1873.

Seibert brought his action to have Garratt's interfering pa-

tent declared null and void, and the following is the decree of the court:

NICHOLAS SEIBERT, Complainant,
vs.
WILLIAM T. GARRATT, Defendant,
} No. 1199. In equity.

DECREE.

This cause came on to be heard at the February term, A. D. 1875, of this court, and was argued by counsel, and thereupon upon consideration thereof, it was ordered, adjudged, and decreed as follows, viz:

That defendant, William T. Garratt, was not the first or original inventor or discoverer of the improvement or discovery claimed by him, in and by those certain reissued letters-patent of the United States, number five thousand three hundred and twenty-eight (No. 5328), for an alleged new and useful improvement in lubricators, issued to said defendant, William T. Garratt, on the 18th day of March, A. D. 1873, and is not entitled to a patent therefor, and that said re-issued letters-patent number five thousand three hundred and twenty-eight (No. 5328) are declared void, and the same are hereby vacated and set aside by reason of their interference with those certain letters-patent of the United States number one hundred and eleven thousand eight hundred and eighty-one (No. 111,881), for a new and useful improvement in lubricators issued to complainant, Nicholas Seibert, on the fourteenth (14th) day of February, A. D. 1871.

It was also further ordered, adjudged and decreed that complainant do have and recover of and from defendant his costs and expenses to be taxed herein.

(Signed) LORENZO SAWYER,
Circuit Judge.

From this decree the defendant Garratt appeals, and the question before this court is, did the court below err in vacating and setting aside Garratt's patent?

SEIBERT'S INVENTION.

With a view to a proper understanding of this case, it becomes necessary to consider, briefly, the circumstances surrounding the invention in controversy. It appears from the testimony (printed page 34), that Seibert obtained a patent September 14, 1869, for an improved lubricator (see plate 3), involving the principle of hydrostatic-pressure to feed out the oil, but did not fully appreciate the fact at the time. The witness says—(printed page 34):

"In 1868, I was then engineer at the flouring mill of Messrs. Torson & Clark, Nevada City. I then conceived the idea of making a lubricator like Phillip's Exhibit C, (plate 3). After making a rough working model, I put it on the engine and tried its working qualities either in the fall of 1868, or spring of 1869; it worked well enough to induce me to have a model made and sent to the patent office for letters-patent which I did in March, 1869. *The model was made by William T. Garratt*, and I obtained a patent September 14, 1869. I came to San Francisco in 1870 for the purpose of having lubricators made after that design. After making two, putting one on the engine of the Pacific Foundry in the beginning of May, 1870, I had some difficulty in making it work, it being a piston-cup, and the piston coming hot would expand so much, that it would not work until the *perpendicular pipe*, attached thereto for the purpose of supplying the cup with steam, *would fill with condensed water*, then the cup would work properly, because the metalic packing on the piston cooled. When I discovered that the water in the pipe was the cause of the cup working better, I then concluded to do without the piston and set the cup on end and apply water under the oil, knowing that the oil would float on the surface and the condensed water being introduced into the bottom, would force it (the oil) into the steam chest and cylinder. That gave rise to Weed's Exhibit D, which I made at the time."

Thus we find that the principle of hydrostatic pressure was clearly developed in Seibert's cup of 1869. The piston becoming hot when the steam was first admitted, "would expand so much that it would not work until the *perpendicular pipe* attached thereto would *fill with condensed water;* then the cup would work properly." Seibert says he never changed the *principle* of his cup.

Wm. L. Phillips testifies (printed page 29) that he was the engineer that Seibert left in charge of the Nevada City Mills in March 1869, while he (Seibert) was "getting up his model for a patent to be sent to Washington."

Question.—Look at Watson's Exhibit B (plate 1), and state what difference there is, if any in the introduction of water or steam into the bottom of the cup than that in the principle used by Seibert in the mill at Nevada in 1869 (plate 3), in regard to the same matter?

Answer.—*I think the same principle is involved.*

Seibert, on cross examination is asked—(printed page 36)—In that patent (1869) did you say any thing about hydrostatic pressure?

Answer.—I did not.

Question.—Why did you not?

Answer.—Because at that time *I did not thoroughly understand* that another principle was involved until I discovered it in 1870 after further experiment.

Question.—"By another principle," in your last answer, do you mean the principle of hydrostatic-pressure?

Answer.—I mean the condensed water accumulating in the pipe; and that of itself being a pressure on the piston, independent of the steam-pressure, which aids the working of it.

Phillips is again asked—

Cross-Question (page 30).—Please tell me in what respect the two exhibits B and C work exactly alike?

Answer.—The principle is exactly the same.

This statement is fully sustained by the witness Weed (page 32), the machinist who made Seibert's cups.

Question.—What is the difference in principle between the operation of Phillip's Exhibit C (plate 3) and the operation of Weed's Exhibit D?

Answer.—Phillip's "Exhibit C" is horizontal, requiring a piston to keep the oil and water separate. "Exhibit D" being perpendicular the water and oil are kept separate by the difference in their specific gravities. Otherwise I see no difference, except in details.

Question.—Why was the Phillip's Exhibit changed by Seibert into the form as given by the Weed Exhibit, if you know?

Answer.—It was done at my shop. It was changed by Seibert's orders. He gave me the reason that he wanted to separate the water from the oil, and by turning it perpendicular he could do away with the piston.

Question.—What was the particular objection to the piston, and what was the particular advantage gained by changing it?

Answer.—The objection to the piston was that we could not keep it tight without making so much friction that the *column of water* would not overcome the friction."

This testimony is clear, straight forward and unequivocal. It proves beyond a shadow of doubt that Siebert's cup, patented in 1869, was operated by hydrostatic-pressure, however much Seibert himself might have been ignorant of the fact at the time. His ignorance cannot, in the least, effect his legal claim to whatever he really invented. It is clear from the testimony that Seibert invented the hydrostatic-pressure feed as early as February 1869—when Phillips swears he had charge of one of the cups in the Nevada Mills. (Phillips' testimony, page 29.)

GARRATT'S INVENTION.

In considering Garratt's claim to the invention, the hydrostatic-pressure feed, it will be necessary to understand the theory and operation of the Roscoe Cup (see plate 4) for which Garratt was the agent. He claims to have attached a "condensing" pipe on one of the Roscoe Cups, in the fall of 1869, for the purpose of feeding the lubricant by "hydrostati-pressure." Is this claim true or false? The testimony will show it to be utterly false.

THE ROSCOE CUP.

What is it? The specification of James Roscoe, of England, says: The nature of my invention consists in so constructing a lubricator as to enable *tallow* to be employed as a lubricant."

The Roscoe Cup was therefore expressly designed for the use of tallow, and was never intended for the use of oil. It will be important to keep this fact constantly in mind while examining Garratt's testimony, as an effort is persistently made to confuse the enquiry, by using the terms "oil" and "oil chamber"—when no such terms are applicable to the Roscoe Cup.

Roscoe, in his specification says: "Suppose a vessel to be charged with *tallow;* steam is then admitted by the pipe K (see plate 4) into the vessel A, and exerting pressure on the *surface* of the tallow, *melts* the same and causes it to mix with the steam and pass into the cylinder of the engine at each stroke of the piston, and thus lubricate the same." (See Hillman's testimony printed page 14.)

We respectfully ask a careful reading of this extract from Roscoe's specification, in connection with the drawing (plate 4) which we give of the Roscoe Cup, and which is a photo-litho-

graphic copy of the Roscoe drawing now on file in the United States Patent Office. This extract is the key to this controversy, as it discloses the true character of Garratt's pretended claim to Seibert's invention.

In this Roscoe Cup, for which Garratt was sole agent, the steam is admitted through pipe K where it impinges on the top or upper surface of the tallow and where it melts and loosens up small particles of the grease which becoming mixed, by means of the pulsation pipe I, with the condensed steam, it floats back through pipe K into the steam chest. This would be technically termed "greased steam." At every stroke of the piston, the steam enters the cup and melts and loosens up an additional amount of *surface* tallow which, in time, is floated into the steam chest as the condensed steam remaining in the cup takes the place of the melted and expelled lubricant. The operation of the cup is extremely simple and must have been perfectly understood by Garratt and his willing witnesses who testify in his behalf.

Keeping in view the theory and practical working of the Roscoe Cup, the claim of Garratt appears simply ludicrous.

GARRATT TELLS HIS OWN TALE.

In his testimony—printed pages 37-41—Garratt says:

"In 1869 I put two of Roscoe's *oilers* (cups) on the Water Works' engine at Black Point. After they had been on several days, the engineer, Mr. Snyder, came to my place, and stated that the lubricators did not work well to his satisfaction, and wanted me to go out and see what the trouble was. I called upon Mr. Moore who was the person through whom I got the agency for making these Roscoe *oilers* (cups), and had him go out with me. On examination of the lubricators we found that

the tube (I) termed the *pulsation tube* had been left out of their manufacture. We had the lubricators taken back to my works and the *pulsation tubes put in*, after which they worked better, but not sufficient to satisfy the engineer. He *again* came to my place and wanted me to take those lubricators off, saying they would, or could not condense enough water for his engines, and wanted me to put on what they termed two regular *oil* globes. I told him I could make them work, and did not want him to take them off."

We will here suspend for a moment, the statement of Garratt, to enquire if any one, understanding the operation of the cup could *fail* to name the true cause of the difficulty? The tallow would get so *hard* that the steam, entering pipe K, would fail to loosen up a sufficient quantity of grease to lubricate the engine.

The engineer Snyder to whom Garratt alludes, says (printed page 43) that he had to hang a piece of woolen cloth over the cup to keep it warm, and that "he did this to keep the wind from *congealing* the tallow." The difficulty, then, was with the tallow. It would *congeal*, and the plain remedy was to keep it warm. The woolen cloth "hung over the cup" failed to remedy the difficulty. Garrratt says: "I told him I could make it work and did not want him to take them off." Now comes the wonderful story of the invention.

Garratt continues: "I made a sketch on the floor of what I would do with them, in relation to *a condensing pipe*. (!!!) He looked and said he thought that would work. I had him send in one of the lubricators at once, and then I fixed it for the condenser, *had it fixed* which he then tried. I told Snyder to put the pipe on about 6 feet long, condensing pipe with a regulating cock. I told him that with that, he could open that regulating cock and *drive all the oil out in one minute* with a column of water above."

Unfortunately for Garratt's *veracity*, Snyder swears he never used any thing but tallow, a fact which Garratt admits was within his knowledge, and the difficulty was that the tallow would congeal. He wanted *heat* and not a column of water, for Garratt admits (p. p. 39) that "they used tallow all the time."

Garratt continues: "The condensing pipe filled with water, a regulating cock at the bottom of the condenser, by being opened to allow the water to pass through into the lubricator, the lubricator being lower than the column of water, the water would force the lubricant (congealed tallow) out of the lubricator, being, in working, as you might call it, *hydrostatic pressure*."

Such is the flimsy fiction invented by Garratt, to enable him to pirate Seibert's invention.

HEAR WHAT THE ENGINEERS SAY.

Charles Watson, Chief Engineer of the California Sugar Refinery, was in fact the party who suggested placing the additional pipe on the Roscoe cup. He says: (printed page 20.) "Jacob Snyder and I are well acquainted. Saw him sometimes two or three times a day, and sometimes once a day. He used occasionally to come into my engine room at the Pioneer Woolen Mills."

Question.—Did Jacob Snyder ever consult you as to the use of the Roscoe Lubricating Cup on the steam engines of the Spring Valley Water Works, in their said building close to the Pioneer Woolen Mills.

Answer.—He did consult me upon that matter sometime in the fall of 1869. He came into my engine room at the Pioneer Mills and told me he had great difficulty in using the Roscoe cup on his steam engines. I asked him what the trouble was. He told me *the tallow congealed* in the cup and he could not get it to feed. I told him that difficulty was *easily* overcome,

and proposed to put on a *melting* pipe to the Roscoe cup so as *to melt the tallaw in the cup.* He asked me how I would apply the pipe. I took a piece of board and chalk and made a rough draft of the Roscoe cup, showing him how to make the connection. The diagram hereto annexed, marked Watson's exhibit A (plate 5), is a substantial representation of the rough draft I made for Snyder on the piece of board with chalk. Snyder looked at the diagram I so made on the board, and left it in my engine room at the Pioneer Woolen Mills."

This statement of Watson's is fully sustained by Libomkin, (printed page 31), the fireman in the factory.

In this testimony of Watson we learn who was the real inventor of the pipe put on the Roscoe cup, and the real purpose for which it was put there—as a "melting pipe *to melt the tallow* in the cup"—hydrostatic-pressure not being applicable to a body of congealed tallow, and never for a moment, thought of by Watson.

Watson continues to expose the monstrous falsehoods of Garratt (printed page 21.) "Snyder told me he would see Garratt about it. Some time after, I think the next day, he told me he had seen Garratt regarding the proposition to put a melting pipe on the Roscoe cup, and Mr. Garratt *objected to the pipe being put on,* as it would spoil the looks of the cup."

And yet Garratt has the boldness to swear, not only that he was the inventor of this melting pipe, but to swear that the pipe was *designed* to condense water for the purpose of a hydrostatic column. He admits, that when Snyder first complained, he did not favor a pipe, and only added the pulsation tube I, which would not mar the beauty of the cup. It was only after the *second* call from Snyder that "Garratt told him to try the melting pipe," (see Garratt's evidence, printed page

38) and this confirms the statement of engineer Watson; and Snyder, on cross-examination admits he had the conversation with Watson about the pipe. (page 44.)

Watson was asked, on cross examination, (printed page 25): —When you recommended melting pipes, did Snyder, in fact, put on condensing pipes.

Answer.—The pipes he put on were too long; too much condensed water collected in the pipe and interferred with the purpose for which the pipe was intended.

It will be remembered that Garratt swears (printed page 38) that he "told Snyder to put the pipe on *about* 6 *feet* long"—so as to get "a head of 3, or 4, or 5 feet;"—and again on printed page 39, he swears that his "object was to get a column of water, plenty of water."

The utter falsity of these statements is shown by Garratt himself, immediately afterward, (printed page 40) when asked, was that pipe shortened?

Answer.—*I know it was.*
Question.—How much of that pipe did they cut off?
Answer.—About four feet I should judge.

We now ask, what became of his grand invention—his column of condensed water—his "plenty of water"—his "hydrostatic-pressure?" The pipe connection between the steam-pipe and the lubricator has now been reduced, according to Garratt's testimony to two feet, and this agrees with the statement of all the witnesses. Even poor old Snyder, who evinces a willingness to swear to any thing which Garratt may desire, says (printed page 43), "4 feet were taken off the pipe, and then it kept the tallow *warm*," or became a *melting pipe*.

But to give shape and consistency to his base fabrications regarding his pretended invention of hydrostatic-pressure, he sup-

plies his imaginary condensing pipe with a regulating cock, by which to regulate the hydrostatic-pressure within the cup. His witness, Burnett, whose deposition will be found to be a tissue of falsehoods, and wholly inconsistent with the theory and practical operation of the Roscoe cup—draws a fancy picture of the regulating cock or "screw valve" for regulating the flow of water into the cup. All this fiction is scattered to the winds by the engineers who had charge of the cup. Engineer Montgomery swears (printed page 49), "we *never* attempted to regulate the supply of water under the lubricant. The cocks and pipes *were all kept wide open* except when we wished to clean out or fill up the lubricator." It is perfectly evident then that the cup was not fed by hydrostatic-pressure, through this pipe. The cocks all being open, the lubricant would all have been driven out "in one minute," as Garratt says he told Snyder (page 38). Snyder swears that he had to keep the pipes open. Of course he had, the purpose being to get all the heat possible to keep the tallow in a condition that the steam entering the cup through pipe K would loosen up a sufficient quantity of the tallow to lubricate the machinery. Both the engineers in charge of this Roscoe cup, Montgomery and Snyder, testify positively on the use made of this pipe and fully corroborate engineer Watson, who really designed the pipe, and calls it a *melting* pipe. As a melting pipe it must be kept open. The claim set up by Garratt and his witness Burnette that it was a condensing pipe for the purpose of securing a hydrostatic column, is grossly false, and monstrously absurd. And it is a patent, issued to him on this claim, and under these circumstances, that Judge Sawyer declared void, and vacated by reason of its interference with the patent previously issued to Seibert—(Exhibit A).

Was this action of the court below erroneous? Could the decree have possibly been otherwise? We think not, without doing gross violence to the evidence, and committing a great wrong against Seibert. Whatever invention there might have been in attaching the pipe to the Roscoe oiler, the credit of that invention is due to Watson who suggested it to Snyder—(see Watson's exhibit A, plate V). This is the pipe which Garratt claims as his invention, and on which alone rests his title to the patent. We have shown that the pipe was simply a pipe for heating the tallow in the Roscoe cup. Did Garratt invent it? His only witness is poor old Snyder, whose testimony will be found to be wholly unreliable, and entitled to no credit whatever. He is evidently an ignorant tool of Garratt's.

On the other hand Watson swears positively that he first suggested this very pipe, and that Snyder told him Garratt objected to putting it on the cup, as it would spoil its appearance. Garratt tells us that the first time Snyder complained, he tried to remedy the difficulty by putting on the pulsation pipe I. Watson says he advised Snyder to insist on the melting pipe being applied. Snyder tells Watson that he had complained *again* to Garratt; and Garratt says: "Snyder *again* came to my place, and wanted me to take those lubricators off."

* * * "I told Snyder to put the pipe on." This all agrees with Watson's statement that he first suggested the pipe. Snyder, on cross examination, admits that he had the conversation with Watson about the pipe. Jacob Libomkin swears, (page 31), that he saw the Watson exhibit A, in the engine room of the Pioneer Mills, and that Watson made the drawing, and that Snyder was there. There can be no doubt but that Watson is entitled to the credit for the pipe which forms the only

basis of Garratt's claim to a patent. It is then a clear proposition that the decree of the court below, vacating Garratt's patent, must be sustained.

HOW DID GARRATT OBTAIN HIS MODEL?

The court will be stru k with the similarity between the models of Seibert and Garratt (see plates I and II), and might well conclude that one of the two, was but a copy of the other for such is a fact as shown by the testimony.

James Hillman, who is a partner of Garratt's testifies (page 15), as follows:

Question.—Did you ever see a cup like Seibert's at the Union Iron Works, in this city, on their engine?

Answer.—Yes, that is where I took the drawing.

Question.—You were aware that that cup was manufactured by Mr. Seibert, and put there, were you not?,

Answer.—Yes, I went there to see that cup, to see how near it corresponded with the Roscoe cup.

Question.—Was it necessary to make a *drawing* to ascertain that identy?

Answer.—Oh! no, not necessarily so only to be correct about the matter.

Question.—You took that drawing to Mr. Stockman's shop and asked him to make a pattern after that, did you not.

Answer.—*Yes sir.*

Question.—Did he make you the pattern?

Answer.—*He did.*

Question.—You afterwards made a model after that pattern, did you not?

Answer.—*I afterwards made two.*

It is not strange, then, that Garratt's model should be the counterpart of Seibert's invention when the parties are bold

enough to admit, that they stole, bodily, the whole thing.

Stockman, the pattern maker swore:

Question.—(page 27). Who came to your place of business and requested you to make for *Wm. T. Garratt* a pattern of the Seibert cup?

Answer.—James Hillman came to my place of business, and brought a drawing of the Seibert cup, and said he wanted a pattern made of it. I made a pattern of it for him.

Question.—At the time Mr. Hillman applied to you to make a pattern of the Seibert cup, was he connected in business with *Wm. T. Garratt.*

Answer.—I think he was. I think the partnership consisting of *Wm. T. Garratt* and James Hillman was formed in February, 1870.

Now hear Garratt's confession of guilt.

Question.—(page 40). When and where did you first see the lubricator marked Weed's exhibit D (Seibert's cup)?

Answer.—I think it was at Mr. Booth's foundry.

Question.—When was that?

Answer.—It was sometime after I put the pipes on the Spring Valley Water Works. About a year after.

Question.—Did you then have a model made of it?

Answer.—YES.

Question. How long was this before you applied for a patent

Answer. Somewhere about 6 months; can't tell exactly; don't know how long.

He knows however that fact that he had an exact drawing made of Seibert's cup—had a pattern made—had a model made—and applied for a patent. Did any criminal ever confess to a bolder robbery. No wonder "a stir was mad by this man Seibert" as Garratt tells us on the same page of his testimony. And this court is called on to sustain a patent thus obtained.

We have presented this brief review of the testimony, touching only the material points, and we confidently submit that the following propositions have been clearly established:

1st. That the Roscoe cup, put on the Spring Valley Water Works by Wm. T. Garratt was a cup essentially designed for tallow and that only tallow was used in it.

2nd. That the difficulty with the said cup was the heat was insufficient to prevent the tallow from congealing.

3d. That the pipe which was added was designed for the purpose of melting the tallow.

4th. That engineer Watson of the Pioneer Mills, suggested the use of the pipe for melting the tallow.

5th. That the cock was only for the purpose of cutting off steam when filling or cleaning the cup, and was never used to regulate the feed of condensed water under the lubricant.

6th. That the pipe was never used as a condensing pipe—and as a condensing pipe would have been useless attached to a Roscoe cup using only tallow.

7th. That as a melting pipe it involved no invention.

8th. That Seibert is the first and original inventor of hydrostatic-pressure for feeding a lubricant.

If these propositions are established by the testimony then the decree of the court below was correct, and the same must be affirmed.

All of which is respectfully submitted.

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